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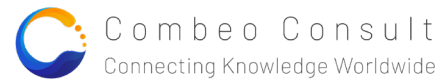


Country Risk Analysis Serbia



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List of abbreviations

AASLD	Agency for Amicable Settlement of Labour Disputes
CPTV	Centre for the Protection of Victims of Trafficking in Human Beings
CSDDD	Corporate Sustainability Due Diligence Directive of the European Commission
BAFA	Federal Office for Economic Affairs and Export Control (German: Bundesamt für Wirtschaft und Ausfuhrkontrolle)
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
HREDD	Human Rights and Environmental Due Diligence
NAP	National Action Plan
NIP	National Implementation Plan
NRPS	National Register of Pollution Sources
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises on Responsible Business Conduct
PCBs	Polychlorinated Biphenyls
POP	Persistent Organic Pollutants
RERI	Renewables and Environmental Regulatory Institute
SCDDA	German Act on Corporate Due Diligence Obligations in Supply Chains
SME	Small Medium Enterprises
SEPA	Serbian Environmental Protection Agency
UNGP	United Nations Guiding Principles on Business and Human Rights

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Country Risk Analysis Serbia



1. Introduction and context of the study

Supply chains, intricate systems facilitating the journey of products from raw materials to consumers, form the lifeblood of the global economy. However, their inherent global nature and complexity have prompted scrutiny due to a lack of transparency. This concern gained traction amidst instances of severe human rights abuses and environmental harm, prompting the development of international frameworks aimed at preventing negative impacts on human rights and the environment. Rising public awareness has driven efforts to increase transparency in supply chains.

This study delves into the *German Act on Corporate Due Diligence Obligations in Supply Chains* (SCDDA), effective since January 1st, 2023.¹ It emerged as the German government's response to prevent tragic incidents like the "Rana Plaza" disaster in Bangladesh, where over 1,100 people, primarily garment workers, lost their lives in 2013. The SCDDA mandates German companies to analyze social and ecological risks in their operations and supply chains, implement preventive measures, and monitor their effectiveness. The act ensures compliance with existing international agreements, thereby improving living and working conditions, especially for individuals in the Global South, and safeguarding the environment.²

The foundation for the current frameworks and

legislation was set in 2011, with the update of the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Guidelines), and the adoption of the *United Nations Guiding Principles on Business and Human Rights* (UNGP).

The OECD Guidelines cover all key areas of business responsibility, including human rights, labour rights, environment, bribery, consumer interests, disclosure, science and technology, competition, and taxation. The 2011 edition of the OECD Guidelines includes new recommendations on human rights abuse and company responsibility for their supply chains, making them the first inter-governmental agreement in this area. In 2023, the OECD Guidelines were further updated with recommendations regarding the supply chain due diligence.

The UNGP are based on three pillars: 1) States' duty to protect human rights; 2) Companies' responsibility to respect human rights; and 3) Access to remedy for victims of human rights violations. The principles are based on previously existing human rights obligations such as the *International Bill of Human Rights* and the International Labour Organisation's *Core labour standards*. This international framework set out requirements for policymakers and businesses, establishing the first generally accepted reference framework for human rights duties of states and the responsibilities of businesses in global supply and value chains.

¹ International Labour Organization [ILO] (2023): The Rana Plaza disaster ten years on: what has changed?, <https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#intro>, (last access: 27.02.24).

² Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung [BMZ] (2023): The German Act on Corporate Due Diligence Obligations in Supply Chains: Implications for businesses in partner countries and support from the German government. <https://www.bmz.de/resource/blob/154774/lieferkettengesetz-faktenpapier-partnerlaender-eng-bf.pdf> (last access: 20.11.23).

Although the UNGP and the OECD Guidelines are not binding, they have led to an important shift in understanding businesses' responsibility from their direct operations to the entire value chain, and laid the foundation for future national legislation, including the SCDDA.

Serbia, as a particular EU candidate country, shows a good level of alignment with EU legislation. Nevertheless, it, still grapples with significant social and environmental risks, notably in the manufacturing, agriculture, and mining sectors. Manufacturing industries, such as textiles, chemicals and electronics, face challenges related to labour rights violations, inadequate working conditions, and low wages. The agricultural sector is not exempt, facing issues like poor labour practices and potential environmental degradation. Mining activities contribute to environmental risks, including pollution and ecosystem damage due to inadequate regulations and monitoring. These economic sectors integral to Serbia's supply chain underscore the necessity for enhanced transparency and responsible business practices. Addressing these risks is crucial for fostering sustainable and ethical practices across various industries in Serbia.

Objective of the study

The main purpose of this study is to inform international companies with operations in Serbia, their Serbian suppliers, and Serbian companies active on the EU-market about social and environmental risks in the country. This information is crucial for these companies to make informed decisions, implement responsible business practices, and enhance sustainability in their operations. The insights generated from this study can contribute significantly to risk mitigation and the promotion of ethical business conduct. The study can support companies to:

- Assess their risks regarding the requirements of the SCDDA,
- Raise awareness among their staff, suppliers, and other stakeholders for social and environmental risks,
- Engage with civil society organizations, government bodies or international organizations on potential social and environmental risks.

The analytical framework for this assessment is grounded in the SCDDA and the prospective Corporate Sustainability Due Diligence Directive (CSDDD) of the EU. The results can also be used by other stakeholders such as political decision makers or civil society.

Structure of the study

Part one of the study gives an overview of the SCDDA and the CSDDD. Part two and three assess

the obligations of labour, social and environmental standards which are explicitly listed in the SCDDA, particularly focussing on the Serbian business context. The study's structure is an analogy to sequence of the legal provisions within the meaning of the German Supply Chain Act³ in Section 2 (2), namely a) forced labour; b) child labour; c) occupational health and safety; d) freedom of association; e) unequal treatment; f) adequate living wages; g) unlawful eviction; h) use of private security forces; i) environment-related risks.

In each chapter, this study will examine the explicitly listed labour, social, and environmental standards and obligations within the SCDDA. This analysis focuses on the legal framework of the SCDDA and its correspondence with the legal framework in Serbia. The analysis will extend to potential infringements and risks stemming from the SCDDA, ultimately concluding with insights into sector-specific considerations and regional occurrences

Methodology

This study consists of a secondary and a primary analysis of data.

The secondary analysis aims to evaluate existing data on social and environmental risks within the Serbian business context. It will assess the actions taken and examine collaboration and support structures, such as industry initiatives and the involvement of relevant international organizations and alliances. The objective is to assess the appropriateness of existing measures to meet due diligence requirements, providing a comprehensive overview of the existing landscape.

The primary analysis shall complement the secondary data. It was implemented by means of semi-structured interviews with relevant stakeholders such as Serbian government institutions, business institutions, trade unions, civil society, NGOs, and the ILO. The stakeholders were chosen according to their importance for Serbian-German business relations and the respective value chains. A list of interview partners can be found in the annex.

The study aims to provide a structured overview of the existing framework with regards to human rights and environmental due diligence (HREDD) in Serbia. Due to its primary reliance on existing literature, an in-depth review of individual social and environmental risks in the Serbian business context is deemed necessary on the company level to comply with HREDD obligations.

³ Bundesministerium der Justiz (2021): Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten. Bundesgesetzblatt, Teil 1 (46). https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl121s2959.pdf#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl121s2959.pdf%27%5D_1698135496217 (last access: 26.11.2023).



2. Overview of the Due Diligence Framework, with focus on German Supply Chain Act and the European Due Diligence Directive

2.1. Act on Corporate Due Diligence Obligations in Supply Chains

In June 2021, the German Bundestag passed the Act on Corporate Due Diligence Obligations in Supply Chains (SCDDA; short: German Supply Chain Act)⁴.

The Act aims to ensure adherence to human rights and environmental standards in global supply chains and represents a significant policy shift in Germany's commitment to ethical business practices and sustainable development as a benchmark for other nations. It is based on the OECD Guidelines as well as UNGP (see introduction) and has far-reaching implications, serving as a template for further due diligence legislation drafts in other countries and the EU.

2.1.1. Human rights risks

A risk related to human rights is defined in the SCDDA as "a situation in which there is a sufficient degree of probability based on factual indications that a violation of one of the following prohibitions will occur":

- Child labour
- Forced labour
- Occupational health and safety
- Freedom of association
- Unequal treatment
- Reasonable wage
- Environmental harm

- Eviction/Resettlement
- Use of security forces⁵

2.1.2. Environmental risks

The SCDDA requires companies to comply with international agreements aimed at limiting the harm caused by pollutants, chemicals, and waste, such as the Minamata and Basel Conventions. The environmental risks that the Act encompasses are:

- Mercury pollution
- Chemicals: Persistent Organic Pollutants (POP)
- Waste disposal
- Hazardous waste

2.1.3. Which organizations fall under the scope of the SCDDA?

The SCDDA applies to companies with headquarters or a branch in Germany with more than 3,000 employees initially (from January 1st, 2023). This threshold was reduced to 1,000 employees from January 1st, 2024. The Act covers all sectors and is not limited to specific industries. It applies to a company's direct suppliers and extends to the entire supply chain.

2.1.4. Risk management and risk analysis reporting requirements

Companies that fall under the scope of the Act must, as purchasers, conduct due diligence to identify, prevent, and mitigate human rights and environmental risks in their supply chains. This includes the obligation of the purchaser to establish a risk management system, conduct regular risk assessments, implement preventive measures, and provide grievance

⁴ German: Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten, LkSG

⁵ Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains of July 16, 2021, 2.

mechanisms. Purchasing companies must also document their due diligence processes and report annually.

According to Section 4 of the Act, purchasers shall establish an appropriate and effective risk management system to identify, prevent, mitigate, and eliminate human rights or environment-related risks and violations. Purchasers shall follow a risk-based approach, i.e. they shall allocate resources in a targeted way and address the most important and urgent issues first. According to Section 5 of the Act, the risk analysis must be conducted by the purchaser once a year and on an ad hoc basis when risks are expected to change due to e.g. product or process changes. The analysis plays a fundamental role in the company's own risk management and helps them allocate their resources in the most responsible manner possible.

2.1.5. Consequences in case of non-compliance

Implementation of the Act is monitored by the Federal Office for Economic Affairs and Export Control (short: BAFA). German enterprises must submit their due diligence reports to the BAFA, which reviews the reports, no later than four months after the end of the financial year. The BAFA also carries out risk-based inspections of enterprises. It may summon persons, enter offices, inspect, and examine documents and prescribe specific measures to remedy problems. It may also impose financial penalties and administrative fines. Non-compliance with the Act can result in penalties - companies can face fines of up to 2% of their annual turnover if they fail to meet their obligations. In addition, companies that receive fines exceeding a certain threshold can be excluded from public procurement procedures for up to three years⁶.

2.2. European Directive on Corporate Sustainability Due Diligence (CSDDD)

On 23rd of February 2022, the European Commission published its proposal for a *Corporate Sustainability Due Diligence Directive (CSDDD)*, which requires large companies to identify and address negative human rights and environmental impacts, in line with key international frameworks including the UNGPs and the OECD Guidelines and associated due diligence guidance.

After almost two years of negotiations, a provisional political agreement was announced between the Council of the EU and the European Parliament in December 2023. Ultimately, the compromise text was endorsed on March 15, 2024, and was adopted by the European Parliament on April 24, 2024. Key changes to the original proposal include: raised threshold for EU companies which fall under the scope of the directive, introducing the concept of "chain of activity" instead of the "value chain" which results in narrowing of the due diligence requirement, and adjusting the provision on civil liability, allowing the Member States to establish 'reasonable conditions' for injured parties to authorize NGOs or other organizations to enforce their rights through legal actions.

2.2.1. Which organizations fall under the scope of the CSDDD?

- EU companies with more than 1000 employees and a net worldwide turnover exceeding EUR 450 million.
- Non-EU companies with a turnover exceeding EUR 450 million within the EU market.
- Franchises with a net worldwide turnover of EUR 80 million and EUR 22.5 million in royalties.

The following staged approach has been introduced for EU and Non-EU companies:

- Group 1 – a 3-year application period for companies with more than 5000 employees and EUR 1500 million turnover;
- Group 2 – a 4-year application period for companies with more than 3000 employees and EUR 900 million turnover; and
- Group 3 – a 5-year application period for companies with more than 1000 employees and EUR 450 million turnover.

For EU companies, turnover refers to net worldwide

⁶ Federal Ministry of Labour and Social Affairs (23.02.2024): Supply Chain Act – Frequently Asked Questions. <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html> (last access: 10.03.2024).

turnover, and for non-EU companies, turnover refers to turnover in the EU. Franchises will have five years to comply.

European small and medium-sized enterprises (SMEs)⁷ are not subject to the proposed rules as purchasers. However, the proposal provides supporting measures for SMEs which could be indirectly affected as suppliers of large companies that fall under the scope of CSDDD and might request their suppliers to implement the law, e.g., when analysing risks and taking preventive and remedial action.

2.2.2. Risk management and risk analysis reporting requirements

The obligation to conduct due diligence is central to the CSDD Directive. Two activities are crucial to the objectives of the directive:

1. The primary objective is to prevent violations of human rights and environmental standards along the “chain of activities” by taking appropriate measures and minimizing risks. Sustainability due diligence must be carried out on new and existing, direct as well as indirect suppliers.
2. If CSDDD criteria cannot be met, companies must take action to improve the circumstances, for example in the form of trainings or audits.

The key elements of the due diligence process according to the Directive are: putting in place a policy framework; identifying the impacts they (may) have on human rights and the environment; taking appropriate measures to prevent or bring an impact to an end; maintaining a complaints procedure; monitoring the effectiveness of due diligence; and communicating their due diligence on companies' websites in the form of an annual statement.

2.2.3. Measures to enforce the rules on corporate sustainability due diligence

Each Member State of the European Union will assign a regulatory authority responsible for ensuring that companies adhere to their responsibilities for due diligence. This will involve a collaborative framework at the EU level, facilitated by a newly formed European Network of Supervisory Authorities, as initiated by the EU Commission.

The designated regulatory bodies will have the authority to conduct audits and investigations, and to sanction companies failing to meet their obligations. Sanctions may include public exposure and fines amounting to as much as 5% of a company's net turnover.

Additionally, the legislation requires Member States to introduce novel civil liability laws that enable holding companies accountable for harm resulting from non-compliance with due diligence responsibilities. Individuals affected, along with their advocates (which may include labour unions and non-governmental organizations), will be given a five-year period to file claims for damages. These new civil liability measures will supplement, not replace, existing national legal frameworks.

⁷ According to the EU Commission Recommendation concerning the definition of micro, small and medium-sized enterprises (2003/361/EC), the category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.

2.2.4. CSDDD in comparison to SCDDA

	Supply Chain Due Diligence Act (SCDDA)	Corporate Sustainability Due Diligence Directive (CSDDD)
Jurisdiction	Germany	European Union
Effective Date	January 1, 2023	Expected 2024-2025
Scope	<p>Companies with 3,000+ employees (2023), Companies with 1,000+ employees (2024)</p> <p>Companies covered in Germany: 4.800 companies</p>	<p>The scope of application includes both member states and companies from non-EU countries if they meet certain requirements. EU companies are covered if they have more than 1000 employees and an annual global net turnover of more than 450 million euros. In a transitional period until 2029, companies will gradually fall under the scope of application, starting with companies with more than 5,000 employees and more than 1.5 billion euros in annual turnover in 2027.</p> <p>Companies covered: in Germany 1450 companies In EU: 5300 companies Outside EU: unknown</p>
Objective	Companies must ensure environmental protection and human rights along their supply chains. Potential and actual risks must be identified, documented, and minimized through preventive and remedial measures.	Companies must identify human rights and certain environmental risks in their value chains, take preventive and remedial measures and report on them. Risks must be identified and eliminated. Companies are also required to draw up a climate plan that shows how they intend to achieve the 1.5-degree target, contribute to climate neutrality, and have set themselves the corresponding emissions targets.
Due Diligence Requirements	Companies must establish risk management processes to identify, prevent, and mitigate risks	Identify, prevent, mitigate, and account for actual and potential adverse human rights and environmental impacts
Risk Areas	Human rights and environmental due diligence obligations (no climate impact)	Broad spectrum of human rights and environmental issues, including climate change impacts
Enforcement Mechanism	Federal Office for Economic Affairs and Export Control (BAFA)	National authorities designated by EU member states
Penalties for Non-Compliance	Fines up to 2 percent of annual turnover, depending on the type and severity of the violation. Exclusion from public sector contracts. No liability under civil law	Maximum fine of 5 percent of the net annual turnover, which will be applied depending on the circumstances of the individual case. Civil liability for damage along the supply chain
Risk assessment	Abstract risk analysis among all direct suppliers based on country/sector risks. Concrete risk analysis of suppliers in risk country or risk sector	Identifying areas where adverse impacts are most likely and severe. Then carry out in-depth assessments of individual suppliers in prioritised areas
Scope of assessment	Direct suppliers and indirect suppliers if there are indications of violations	Entire value chain, including direct and indirect business relationships



3. Human rights risks

3.1. Serbian institutional framework relevant for human rights risks in the business context

Businesses' adherence to human rights-related legislation in Serbia falls under the scope of several institutions, which have different jurisdictions both in terms of topics/human rights, and in terms of their power of enforcement – i.e. whether they can issue sanctions, binding or non-binding recommendations and opinions.

The aim of this section is to provide an overview of Serbian state institutions relevant for safeguarding human rights in the business context, with their jurisdictions and capacities, to provide an insight into:

1. potential sources of official data useful for conducting the supply chain due diligence process;
2. institutional grievance mechanisms available to local workers, human rights CSOs and other stakeholders.

3.2. The Serbian Labour Inspectorate

The Serbian Labour Inspectorate, which operates under the Serbian Ministry of Labour, Employment, Veteran and Social Policy, is one of the most relevant institutions in the context of safeguarding human rights in the business sector. The Inspectorate conducts inspection supervisions related to employment and occupational health and safety and is responsible for supervision over the enforcement of numerous relevant laws, including the Labour Law, Law on Occupational Health and Safety, Law on Strike, Law on Gender Equality, Law on Employment Agencies, Law on Simplified Work Engagement for Seasonal Jobs. In addition, the Inspectorate is responsible for supervision over the enforcement of collective bargaining agreements, general acts, and work contracts, which define rights, obligations and responsibilities of employers and employees.⁸

The Inspectorate has 27 departments across Serbia, including two in Belgrade, and in 2022 it employed 207 labour inspectors (out of a total of 282 posts), a decrease compared to the previous period (2019: 238 labour inspectors). In its evaluation report for Serbia, published in June 2023, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA), states that it was informed by the Ministry that the process of hiring additional labour inspectors is in progress.⁹ According to stakeholders from the civil sector, unions and international organizations interviewed for this study, being understaffed is one of the most significant challenges in the work of the Inspectorate.

⁸ European Commission (2022): Commission Staff Working Document: Serbia 2022 Report.

⁹ Group of Experts on Action against Trafficking in Human Beings [GRETA] (2023): Evaluation Report Serbia: Third evaluation round. Access to justice and effective remedies for victims of trafficking in human beings, p. 45.

The Inspectorate publishes annual reports on conducted inspections and respective outcomes, in Serbian.¹⁰ According to the reports of the Inspectorate, the most common reasons for reporting complaints to the Inspectorate are: non-payment of contracted wages, non-payment of wage contributions, unlawful termination, and non-payment.¹¹

3.3. Grievance mechanisms at the workplace

Grievance mechanisms, one of the key concepts in SCDDA¹², are not mandatory as internal mechanism of a company according to the Serbian Labour Law. This allows for the development of informal or inadequate internal mechanisms for grievances at the workplace. The Law on Prevention of Abuse at Work (Official Gazette of the Republic of Serbia, No. 36/2010) is the only legal regulation which explicitly regulates the internal company process.

The implementation of this law is linked exclusively to cases of workplace abuse in a specific company. The objective of the internal process is for the dispute parties to reach an agreement, with the assistance of a mediator, which contains measures aimed at stopping the abuse and thus settling the dispute within the company, without entering court proceedings. In that sense, the internal protection process is presented as a process prerequisite for court mandated protection. Unlike the classical grievance procedures, which should, in line with the international standards, be free of cost for workers, the process costs are equally divided between the parties¹³.

The ILO project “Ensuring adequate access to grievance mechanisms for the workers in automotive, electrical, and textile industry in Serbia” supported by GIZ, assesses the grievance handling capacities of companies in target industries as weak, so the project aims to improve complaints mechanisms. The project also includes the development and dissemination of the “[Manual on grievance mechanisms](#)”, as a practical tool for companies that aim to improve their procedures in this area.

3.4. The Agency for Peaceful Settlement of Labour Disputes

Although grievance mechanisms are not mandatory in Serbian law, there is an institutional framework for grievance mechanisms in place, which consists primarily of procedures of mediation and arbitration offered by the *Agency for Peaceful Settlement of Labour Disputes*, and the *Commissioner for Equality Protection* which is, inter alia, responsible for receiving and addressing complaints related to discrimination at work.

The Agency for Peaceful Settlement of Labour Disputes in Serbia is responsible for the amicable resolution of collective and individual labour disputes. It is an agency established by the Government and managed by the Director who is appointed by the Government. Its responsibilities include the selection of conciliators and arbiters, keeping the directory of conciliators and arbiters, decisions on challenge of conciliators and arbiters, records on procedures of amicable resolution of individual and collective labour disputes, and other statutory duties¹⁵.

The proceedings before the *Agency for Peaceful Settlement of Labour Disputes* shall be initiated by the Motion for the Initiation of the Procedure that contains the information on the proposer, on the other party in the procedure and the subject of dispute. The Motion shall be filed to the Republic Agency for Peaceful Settlement of Labour Disputes.

Upon the receipt, the Agency shall submit the Motion with accompanying letter and documents to the other party inviting it to declare within 5 working days, whether it accepts the Proposal. If the other party accepts the Proposal, the procedure is initiated under the Decision.

Parties to the dispute can select a conciliator and arbiter from the Directory of conciliators and arbiters.

¹⁰ <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/izvestaji-o-radu/plan-inspekciskog-nadzora>

¹¹ European Commission (2022): Commission Staff Working Document: Serbia 2022 Report.; European Commission (2021): Commission Staff Working Document: Serbia 2021 Report.

¹² The German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (SCDDA), stipulates that: (1) The enterprise must ensure that an appropriate internal complaints procedure is in place in accordance with paragraphs (2) to (4). The complaints procedure enables persons to report human rights and environment-related risks as well as violations of human rights-related or environment-related obligations that have arisen as a result of the economic actions of an enterprise in its own business area or of a direct supplier. Receipt of the reported information must be confirmed to the person having reported the information. The persons entrusted by the enterprise with the implementation of the procedure must discuss the facts with the persons having reported the information. They may offer a procedure for amicable settlement. The enterprises may instead participate in an appropriate external complaint's procedure, provided it meets the following criteria.

(2) The enterprise establishes rules of procedure in text form which are publicly available.

(3) The persons entrusted by the enterprise with the conduct of the proceedings must offer a guarantee of impartiality; in particular, they must be independent and not bound by instructions. They are bound to secrecy.

(4) The enterprise must make clear and comprehensible information on accessibility and responsibility and on the implementation of the complaints procedure publicly available in an appropriate manner. The complaints procedure must be accessible to potential parties involved, must maintain confidentiality of identity, and must ensure effective protection against disadvantage or punishment as a result of a complaint.

¹³ ILO (2023): Manual on grievance mechanisms.

¹⁴ ILO (2023): Access to grievance mechanisms for workers in selected industries in Serbia. https://www.ilo.org/budapest/what-we-do/projects/WCMS_867306/lang--en/index.htm (last access: 16.11.2023).

¹⁵ Law on amicable resolution of labour disputes. Official Gazette of the Republic of Serbia, Nos. 125/04, 104/09, 50/18.

If the parties are unable to agree on the conciliator or arbiter, the Agency Director shall appoint one. In case that the other party in the procedure rejects the Proposal or fails to answer, the procedure shall be closed.

In individual disputes, the arbiter shall close the procedure by a Decision which shall be final, valid, and binding (no possibility of appeal, binding upon both parties – it might be enforced). When the procedure is closed by the Decision of an arbiter, the parties have no right to initiate court proceedings on such basis, and the party that is not satisfied with the outcome, has the right to extraordinary judicial remedy in accordance with the Law.

In collective labour disputes, if an agreement is reached, the Conciliation Panel (comprised of parties to the dispute and conciliator) shall adopt the Recommendation on dispute resolution. The conciliator, at the request of one of the parties, may give the recommendation. The parties to the dispute may conclude an agreement on the settlement of the dispute based on recommendations. If the subject matter of the dispute is collective agreement, the agreement becomes the basis for the conclusion, modification and/or amendment of the collective agreement¹⁶.

According to the available data, in the period 2018-2021, the proceedings before the Agency for Peaceful Settlement of Labour Disputes comprised only 31% of labour disputes, compared to the labour lawsuits filed to courts. This indicates that the Agency is not widely recognized among employees and employers as alternative means of labour disputes resolution¹⁷.

The Commissioner for the Protection of Equality

The Commissioner for the Protection of Equality is an independent government institution with the mandate to issue recommendations and opinions on cases of discrimination, protect equality, and oversee the enforcement of antidiscrimination regulations. Annual reports of the Commissioner for Protection of Equality show that the majority of all received complaints are related to the area of employment.¹⁸

A complaint to the Commissioner can be filed by an individual, a group of individuals, a legal entity, or a civil society organization for protection of human rights. If the conditions for further proceedings have been fulfilled, the Commissioner for the Protection of Equality shall send the received complaint to the defendant within 15 days from the submission of the complaint. The Commissioner determines the facts by reviewing all the evidence that is relevant for the procedure and decision-making and by taking a statement from the complainant, the person against whom the complaint was filed, as well as other persons (e.g. witnesses). The Commissioner will not act further on the complaint, if the person against whom the

complaint was filed has removed the consequences of the action that was the reason for filing the complaint, and the complainant agrees that the consequences have been removed. Such consent shall be given by the complainant not later than 15 days from the day of receipt of the Commissioner's letter.

The Commissioner has the legal deadline of 90 days to give her decision upon a complaint. The Commissioner may take statements from other persons (e.g. witnesses) to establish the facts and may suggest the reconciliation procedure if the legal conditions to do so are met. The Commissioner, during the procedure until the opinion is issued, may propose the implementation of the negotiation procedure to reach an agreement, in accordance with the law governing the mediation procedure in resolving disputes. This procedure is free of charge for the complainant before the Commissioner.

The Commissioner issues an opinion on whether the act of discrimination did occur or not. If the Commissioner concludes that the act of discrimination did occur, the opinion will include a recommendation on the manners to rectify the violation of rights. If the discriminator fails to act in line with the recommendation received (and the discriminator is obliged to inform the Commissioner about the measures undertaken in line with the recommendation), the Commissioner shall issue a warning, and give a new deadline. However, if the discriminator does not act upon the warning, the Commissioner may notify the public that the discriminator has failed to meet the recommendation and the warning, and that failed to rectify the violation of rights. The Commissioner is not authorized to sanction the discriminators if they fail to meet the recommendations but can convince them to do so by the authority of the institution represents, by the strength of their arguments, and by the use of public pressure¹⁹.

3.5. The Protector of Citizens - Ombudsman of the Republic of Serbia

The Protector of Citizens of the Republic of Serbia controls the holders of public authority, i.e. protects the rights of citizens when those rights have been breached by public institutions. Private companies, as well as those publicly owned that do not have delegated public authority, do not fall within the competence of the Protector of Citizens. Therefore, the Protector of Citizens cannot act on complaints against private companies or publicly owned companies that do not have delegated public authority. In addition, the Law stipulates that before submitting a complaint, the applicant is obliged to try to protect his or her rights in

¹⁶ Republic agency for peaceful settlement of labour disputes (n.d.): Motion for the Initiation of the procedure. <https://www.ramrrs.gov.rs/en/initiation-of-proceedings> (last access: 03.12.2023).

¹⁷ Inicijativa za razvoj i saradnju [Initiative for development and cooperation] (2022): Izazovi mirnog rešavanja radnih sporova [Challenges of peaceful settlement of labor disputes].

¹⁸ Commissioner for Protection of Equality (2022): Regular Annual Report of the Commissioner for Protection of Equality for 2022.

¹⁹ Commissioner for Protection of Equality (n.d.): Complaints Procedure. <https://ravnopravnost.gov.rs/en/discrimination/complaints-procedure/> (last access: 27.11.2023).

the appropriate legal proceedings.

In accordance with the abovementioned, and relevant in the context of this study, the Protector of Citizens acts on complaints against the Labour Inspectorate (within the Ministry of Labour, Employment, Veteran and Social Affairs), which is competent to deal with complaints of workers for violations of labour rights. The Protector of Citizens acts on the complaints of persons who contacted the Labour Inspectorate and were not satisfied with its treatment of the problem and who consider that the Inspectorate acted contrary to the regulations in force.²⁰

The following chapters focus on the human rights risks covered by the SCDDA by describing the legal framework of SCDDA, the Serbian legal framework, presenting infringements and risks and drawing conclusions concerning sectors and regional occurrences.

3.6. Forced/ bonded labour

3.6.1. Legal framework

SCDDA

The German SCDDA defines “the prohibition of the employment of persons in forced labour; this includes any work or service that is required of a person under threat of punishment and for which he or she has not made himself or herself available voluntarily, for example as a result of debt bondage or trafficking in human beings” and “the prohibition of all forms of slavery, practices akin to slavery, serfdom or other forms of domination or oppression in the workplace, such as extreme economic or sexual exploitation and humiliation;” as human rights risks.^{21 22}

It is important to clarify that the concept of “exploitation”, yet being fundamental element of forced labour as defined in SCDDA, is not defined in international law. Its understanding ranges from minor or major violations of labour laws that are subject to civil or administrative sanctions, to situations resulting

in severe harm that are subject to criminal sanctions.²³

Serbian law

Forced labour is prohibited by both national and international legal regulations. Article 26 of the Constitution of the Republic of Serbia states: “No one can be held in slavery or in similar positions. Any form of human trafficking is prohibited. Forced labour is prohibited. Sexually or economic exploitation of a person who is in a disadvantageous position is considered forced labour.”

Among the international regulations, the most important are the ILO 130 Forced Labour Convention No. 29 and the respective 2014 Protocol 29 to the Forced Labour Convention, and the 1957 Abolition of Forced Labour Convention No. 105. Both conventions were ratified by the Republic of Serbia, on 24 November 2000 and 10 July 2003 respectively, and entered into force. However, the Protocol 29 has not been ratified yet. According to this Protocol, each Member should develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour in consultation with employers’ and workers’ organizations, which shall involve systematic action by the competent authorities and, as appropriate, in coordination with employers’ and workers’ organizations, as well as with other groups concerned. So far, there is no evidence that Serbia has adopted such a policy.

The Criminal Code (Article 388) criminalizes sex trafficking and labour trafficking and prescribes penalties ranging from two to 12 years of imprisonment for offenses involving an adult victim (and three to 12 years of imprisonment for those involving a child victim).

The Law on the Liability of Legal Entities for Criminal Offences also applies to human trafficking offences. It is applicable to Serbian and foreign businesses responsible for criminal offences in Serbia, foreign businesses committing offences on territory of a foreign country which damage Serbia or Serbian national or legal entities, and Serbian legal entities committing offences abroad.²⁴

The Ministry of Labour, Employment, Veterans and Social Affairs is responsible for the support and

²⁰ Protector of Citizens (2019): Inputs from the Protector of Citizens for the working group on business and human rights on the role of national human rights institutions in facilitating access to effective remedy for business related human rights abuses. https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Remedy/Protector_of_Citizens_Serbia.pdf (last access: 23.11.2023).

²² Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021, Section 2- Definitions. https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (last access: 12.01.2024).

²³ In its “Guidance note on preventing and combatting trafficking in human beings for the purpose of labour exploitation”, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) further outlines key components and differentiates between the mentioned terms: trafficking in persons, is a combination of three components: an “action” (recruitment, transportation, transfer, harbouring or receipt of persons), which is committed through the use of “means” (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person), for the “purpose” of exploitation. The definition provides an open-ended list of “exploitation” practices, which include the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, or servitude. The consent of a person to the intended exploitation is irrelevant where any of the previously mentioned “means” have been used, or where the trafficked person is a child. GRETA’s Guidance Note further notes that “trafficking for the purpose of labour exploitation” as a term is used to differentiate between trafficking for the purpose of sexual exploitation, and trafficking for exploitative purposes in different economic sectors, both in the formal and informal economy.

²⁴ GRETA (2020): Guidance Note on preventing and combatting trafficking in human beings for the purpose of labour exploitation, pp. 4-5. Skrivankova, Klara; Vukasovic, Tamara (2017): Report on trafficking for the purpose of labour Exploitation in Serbia. Council of Europe, p. 24. Ibid., p. 27; <https://centarzztlj.rs/wp-content/uploads/2020/07/Statut.pdf> (last access: 12.01.2024).

protection of trafficked persons through the operation of the *Centre for the Protection of Victims of Trafficking in Human Beings* (hereinafter CPTV), set up in 2012. The CPTV is responsible for the formal identification of victims. It is also responsible for coordinating the overall victim assistance and protection.²⁵

The Labour Inspectorate operates under the Ministry of Labour, Employment, Veterans and Social Affairs. It cooperates with other authorities in the detection of possible cases of trafficking and conducts joint inspections with the police²⁶. Under the project "Preventing and Combating Trafficking in Human Beings in Serbia", implemented by the Council of Europe, training activities were implemented to improve the understanding of labour inspectors about their roles and responsibilities in anti-trafficking action, in particular regarding victim identification and referral to assistance²⁷. Nevertheless, both relevant reports and interviews with stakeholders from the civil sector indicate that further strengthening of the Inspection's capacities is necessary.²⁸

The Market Inspectorate operates under the Ministry of Trade, Tourism and Telecommunications. It is responsible for inspecting agencies that are involved in any form of job brokering with or without a license and also have the power to remove improper advertising in this area. The Market Inspectorate also controls illegal recruitment services offered by unregistered individuals. Since trafficking in human beings for labour exploitation often occurs in the grey areas of the labour market, where unregistered entities operate, the Market Inspectorate plays an important role not only in detecting potential situations of exploitation, but also in prevention through deterrence and inspection of on-line advertising. The online job recruitment and job advertising in Serbia and abroad falls within the mandate of the Market Inspectorate. This function is particularly relevant to prevention and identification of trafficking for labour exploitation, as some of the recruitment occurs through on-line jobs advertising. In conclusion, while several areas of responsibility of the Market Inspectorate bear relevance to trafficking in human beings, the service has not received comprehensive training on human trafficking so far²⁹.

3.6.2. Infringements and risks

Basic economic and social indicators such as poverty and unemployment rates, educational opportunities and discrimination are important factors in increasing the risk of forced labour. In addition, certain groups are

at higher risk of forced labour: workers in the informal economy, seasonal/temporary workers, migrant workers, and minority groups such as Roma, who face systemic discrimination and barriers to accessing the labour market.

Informal employment makes a significant share of the labour-force in Serbia. According to 2019 data, 18.7% of workers are in informal employment³⁰. Informal employment occurs most frequently in the formal sector (8.0%), followed by the informal sector (6.2%), and households (4.5%)³¹. The most represented sector in the informal economy is, by far, agriculture (40.5%), followed by domestic work (24.4%) and construction (8.4%).

High exposure to risks related to hazards, conditions, and circumstances in the mentioned sectors, combined with low or total lack of social rights protection, makes workers in the informal economy highly vulnerable to exploitation, including forced labour.

Workers undertaking temporary or seasonal work, and work on short-term contracts are at greater risk of labour rights violations and exploitation. Temporary and seasonal workers are also often unregistered and hence cannot exercise rights at work. In addition, workers who work legally in the so-called "non-employment regime" (in Serbian: "*rad van radnog odnosa*"), which is envisaged as short-term engagement, often work for years on such short-term contracts³², which are renewed over and over.

Migrant workers, who are often at the same time temporary workers, face additional risks due to their immigration status. Although the legal framework regarding migrant workers is in place (Serbia has ratified the ILO Convention No. 97 on Migration for Employment³³ and has in 2023 adopted the new Law on Employment of Foreign Workers which entails improved protection of their rights), improvements are still needed both in the framework (e.g. Serbia has not yet ratified the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families) and in its enforcement. There has been a consistent and significant increase in the number of arrivals in Serbia since 2017 (2017: 5,435 arrivals; 2022: 120,883 arrivals)³⁴.

Migrants with insecure immigration status are at particularly high risk of forced labour, as they often do not possess personal documents and are reluctant to seek institutional assistance due to the fear of

²⁵ Ibid., p. 27; <https://centarzztlj.rs/wp-content/uploads/2020/07/Statut.pdf> (last access: 12.01.2024).

²⁶ GRETA (2023): Evaluation Report Serbia. *Third evaluation round*. <https://rm.coe.int/greta-evaluation-report-on-serbia-3rd-evaluation-round-gre-ta-2023-09-a/1680ab9bc6> (last access: 10.01.2024).

²⁷ Council of Europe (2022): Labour Trafficking in Serbia: Risk Factors, Trends, and Challenges, p. 13. <https://rm.coe.int/report-labour-trafficking-in-ser-bia-2022/1680a8183a> (last access: 20.01.2024).

²⁸ GRETA (2023): Evaluation Report Serbia. *Third evaluation round*, p. 48; U.S. Department of State (2023): 2023 Trafficking in Persons Report: Serbia. <https://www.state.gov/reports/2023-trafficking-in-persons-report/serbia/> (last access: 12.01.2024).

²⁹ Skrivankova, Klara; Vukasović, Tamara. (2017): Report on Trafficking for the Purpose of Labour Exploitation in Serbia. Council of Europe, p. 29. <https://rm.coe.int/serbia-preventing-and-combating-trafficking-in-human-beings-pdf/168075f341> (last access: 14.01.2024).

³⁰ ILO (2019): Overview of the informal economy in Serbia. https://www.ilo.org/wcmsp5/groups/public/-/ro-geneva/-/ro-budapest/documents/genericdocument/wcms_751317.pdf (last access: 14.01.2024).

³¹ Ibid.

³² Council of Europe (2022): Labour Trafficking in Serbia: Risk Factors, Trends, and Challenges, p. 39. <https://rm.coe.int/report-labour-trafficking-in-ser-bia-2022/1680a8183a> (last access: 20.01.2024).

³³ Excluding the provisions of Annex III: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:12100:P12100_INSTRUMENT_ID:312242:NO (last

access: 16.01.2024); <https://centarzztlj.rs/wp-content/uploads/2020/07/Statut.pdf> (last access: 16.01.2024).

³⁴ IOM (2022): Flow monitoring surveys' report Serbia, p. 5. https://dtm.iom.int/reports/serbia-flow-monitoring-surveys-report-round-1-30-june-19-sep-tem_ber-2022 (last access: 14.01.2024).

deportation. Risk for legally employed migrant workers also remains high. The most numerous nationalities receiving work visas are Chinese, Russian, Turkish, and Indian. In 2022, the National Employment Service issued 35,168 work permits for foreign citizens³⁵. However, given the increasing demand for workforce in some industries, for example construction, and the visa free regime with some countries, it is likely that the real number of migrant workers, including those engaged in undeclared work, is actually higher³⁶.

Another risk factor to be taken into consideration is the involvement of recruitment/employment agencies, more specifically the insufficient mechanisms for monitoring their work. The Serbian Ministry of Labour, Employment, Veterans and Social Affairs and the Market Inspection are responsible for monitoring the work of the licensed recruitment agencies which, inter alia, act as brokers for Serbian citizens in finding employment abroad, and for recruiting foreign workers. The agencies which do not fulfil the requirements under the Law on Agency Employment may have their licenses revoked for a period of three years³⁷. The registries of the licenced agencies, as well as the agencies whose license has been revoked are available at the website of the Ministry³⁸.

Although the risks are increasing, the number of cases identified by the institutions remains low: in 2020, the total number of cases of human trafficking reported by the Centre for the Protection of Victims of Trafficking in Human Beings was 57, including men, women, and children. Out of this total number, 21 were the victims of sexual exploitation, and 12 were the victims of forced labour³⁹. This confirms the limited capacity of the institutions to tackle this complex challenge.

Numerous relevant reports indicate other severe cases of forced labour, that have not yet had an adequate institutional response^{40 41 42}. For example, in 2021, credible allegations indicate Vietnamese workers faced forced labour at a construction site for a Chinese-owned tire manufacturing plant⁴³. While the National Rapporteur on Trafficking visited the factory and called for an investigation, the government was slow to respond to the allegations of forced labour and did not fully adhere to its own protocols. The investigation of the allegations remained “ongoing,” yet the government maintained the Vietnamese workers were not trafficking victims⁴⁴.

Another indicative case in the road construction industry was documented by the prominent Serbian anti-trafficking NGO Astra. ASTRA collected information about the case through direct contact with the Indian workers, field visits, the workers’ documentation,

contacts with national and international trade unions - Independent Road Workers’ Union of Serbia, global union Building and Woodworkers International (BWI), state bodies and media reports. Workers experienced poor working conditions, salary non-payment, confiscation of personal documents, poor living accommodations, salary penalties for taking sick leave, and a lack of work permits, among other indicators of potential labour abuse and trafficking. The key challenges this case revealed include: a slow and inadequate response; a lack of mechanisms and institutional capacities to properly assist such a large number of alleged victims; and a lack of just closure for the victims⁴⁵.

3.6.3. Conclusion towards the risks: sectors, regional occurrences

The risk of forced labour is to be considered especially in the context of informal employment, temporary/seasonal work, and migrant workers. Migrant workers are an emerging vulnerable group, considering the drastically increasing influx of foreign workers over the past several years, which is expected to continue to grow.

While the probability of risk is countrywide, sectors under higher risk are agriculture, construction, and domestic work.

Although a legal framework is in place and solid, the capacities of relevant institutions, or rather the lack thereof, are to be considered in the context of prevention, identification, and access to justice.

3.7. Child Labour

3.7.1. Legal framework

SCDDA

The SCDDA prohibits the employment of a child under the age at which compulsory schooling ends according to the law of the place of employment, provided that the age of employment is not less than 15 years. This is valid, except where the law of the place of employment permits the employment or work of persons 13 to 15 years of age on light work, in accordance with Convention No. 138 of the ILO of 26 June 1973⁴⁶.

³⁵ Council of Europe (2022): Labour Trafficking in Serbia: Risk Factors, Trends, and Challenges, p. 40. <https://rm.coe.int/report-labour-trafficking-in-serbia-2022/1680a8183a> (last access: 20.01.2024).

³⁷ GRETA (2023): Evaluation Report Serbia. Third evaluation round, p. 68.

³⁸ Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja [Ministry of advice, rehabilitation, combating and social issues] (2019): Sektor za rad i zapošljavanje [Sector for Labour and Employment]. <https://www.minrzs.gov.rs/sr/registri/sektor-za-rad-i-zaposljavanje> (last access: 20.01.2024).

³⁹ Council of Europe (2022): Labour Trafficking in Serbia: Risk Factors, Trends, and Challenges, p. 19. <https://rm.coe.int/report-labour-trafficking-in-serbia-2022/1680a8183a> (last access: 20.01.2024).

⁴⁰ UN Economic and Social Council (2022): Concluding observations on the third periodic report of Serbia, p. 9.

⁴¹ European Commission (2022): Serbia 2022 Report, p. 36.

⁴² U.S. Department of State (2023): 2023 Trafficking in Persons Report: Serbia. <https://www.state.gov/reports/2023-trafficking-in-persons-report/serbia/> (last access: 16.01.2024).

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Astra Anti-trafficking action (2023): Indian Workers Exploited in the Serbian Road Construction Industry. https://drive.google.com/file/d/1seOwE_vZ4-gPHoFpHvJXIdWxbodfRZzZ/view?pli=1 (last access: 20.01.2024).

⁴⁶ Federal Law Gazette 1976 II, pp. 201-202

Moreover, SCDDA prohibits the worst forms of child labour for children under 18 years of age⁴⁷. This includes:

1. all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, as well as forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflicts,
2. the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,
3. the use, procuring or offering of a child for illicit activities, in particular for the production of or trafficking in drugs,
4. work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children⁴⁸.

Serbian law

In the Serbian legal framework, there is no consolidated definition of child labour, whilst elements can be found in various parts of the legislation. Serbia has ratified three main conventions regulating child labour: the United Nations Convention on the Rights of the Child (CRC, ratified in 2001), ILO Convention No. 138 on Minimum Age (C. 138, ratified in 2000) and ILO Convention No. 182 on the Worst Forms of Child Labour (C. 182, ratified in 2003).

According to Serbia's Labour Law⁴⁹, Article 24, an employment relationship may be established with a person who is at least 15 years old. Serbia, unlike other countries, does not allow light child labour for children aged 13–15. Article 25 states that for persons younger than 18, employment is possible only with the consent in writing of a parent, adoptive parent, or a guardian, provided that such work is not prohibited by law, i.e. it does not put at risk their health, morality, and education.

Articles 84 and 85 regulate work for persons aged 15–18 and 18–21, respectively. An employee younger than 18 years of age may not work at jobs that are physically exhausting, such as under the ground, in water or at a considerable height. It is not allowed that persons below 18 years are exposed to radiation, poison, and jobs with risks of cancer, nor jobs with health risks caused by cold, heat, noise, or vibration. Persons aged

18–21 can work on such jobs only if a medical agency concludes that the job is not harmful for their health.

Articles 87 and 88 set full working hours for employees below 18 years at 35 hours per week and no longer than 8 hours per day. Overtime work, as well as rescheduling of working hours, is prohibited. Work at night is generally prohibited.

To prevent the worst forms of child labour, Serbia has recently adopted several protocols and instructions⁵⁰. The Regulation on Hazardous Labour of Children (2017) identifies dangerous branches of economic activities and defines physical and chemical harm for children (undesirable climatological or microclimatological factors; difficult physical or psychological efforts; high non-ionizing radiation; noise above 85 decibel (dB) ; vibration and tobacco smoke) and dangerous situations for children. The Regulation for Determining Dangerous Work for Children (2017) specifies economic activities leading to physical and chemical harm and further dangerous occasions for children.⁵¹

Elimination and prevention of child labour is among the strategic objectives of the Labour Inspectorate, together with protection of other vulnerable groups of employees. As stated in the Annual report of the Labour Inspectorate for 2022, labour inspectors are expected to pay due attention to the child labour issue, to recognize, reveal and sanction it. Moreover, the Inspectorate shall implement preventative measures, provide information about employment possibilities for children and youth and raise awareness about potential dangers of early employment⁵². As part of the MAP16 project, implemented by the ILO, the [Checklist for Inspection Oversight](#) and the revised Instruction and Special Protocol for Labour Inspection for protecting children from child labour, were adopted in 2020 and 2021 respectively⁵³.

Although, as stated above, several national laws and regulations are in place, Serbia has not adopted a National Action Plan (NAP) on business and human rights to implement the UNGPs, which would provide a coherent and systematic framework for identifying national issues, mitigating, and preventing human rights abuses by businesses and providing victims with an effective grievance mechanism.

⁴⁷ In accordance with Article 3 of Convention No. 182 of the International Labour Organization of 17 June 1999 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Federal Law Gazette 2001 II pp. 1290, 1291)

⁴⁸ Federal Law Gazette (22.07.2021): The Act on Corporate Due Diligence Obligations in Supply Chains, Section 2 - Definitions.

⁴⁹ Serbia. The Labour Law. Official Gazette of the Republic of Serbia, no. 75/2014.

⁵⁰ Notably: Strategy for Eliminating Abuse of Child Labour in Serbia (2018–2022), Special Protocol for the Labour Inspectorate to Protect Children from Child Labour, including the Worst Forms of Child Labour and Violating Child Labour Rights (2017, revised 2021); Inspection Checklist (Control List) for Child Labour (2020); Instruction for Inspectors in Performing Inspection Monitoring to Protect Children from Child Labour (2017); Regulation on Hazardous Labour of Children (2017); Instruction for Centre for Social Work for Protecting Children from Child Labour (2017); and Instruction on the Work of Social Protection Institutions and Organizations of Social Protection for the Provision of Social Protection Services to Children in the Protection of Children from Abuse of Child Labour (2021).

⁵¹ Working underground; overtime work; work on roads; work outside of places of residence if children are younger than 15; confined workplaces; work underground or at heights; work on dangerous machines, devices and with sharp objects; and where the body is in an awkward position for prolonged periods while working (for example, standing, kneeling and crouching)

⁵² Labour Inspectorate (2022): The Annual Report of the Labour Inspectorate for 2022, pp. 30–31.

⁵³ Ministry of Labor, Employment, Veterans and Social Affairs of the Republic of Serbia (n.d.): Контролне листе - инспекцијски надзор [The Checklist for Inspection Oversight]. <https://www.minrzs.gov.rs/sr/dokumenti/ostalo/kontrolne-liste-inspekcijski-nadzor> (last access: 16.12.2023).

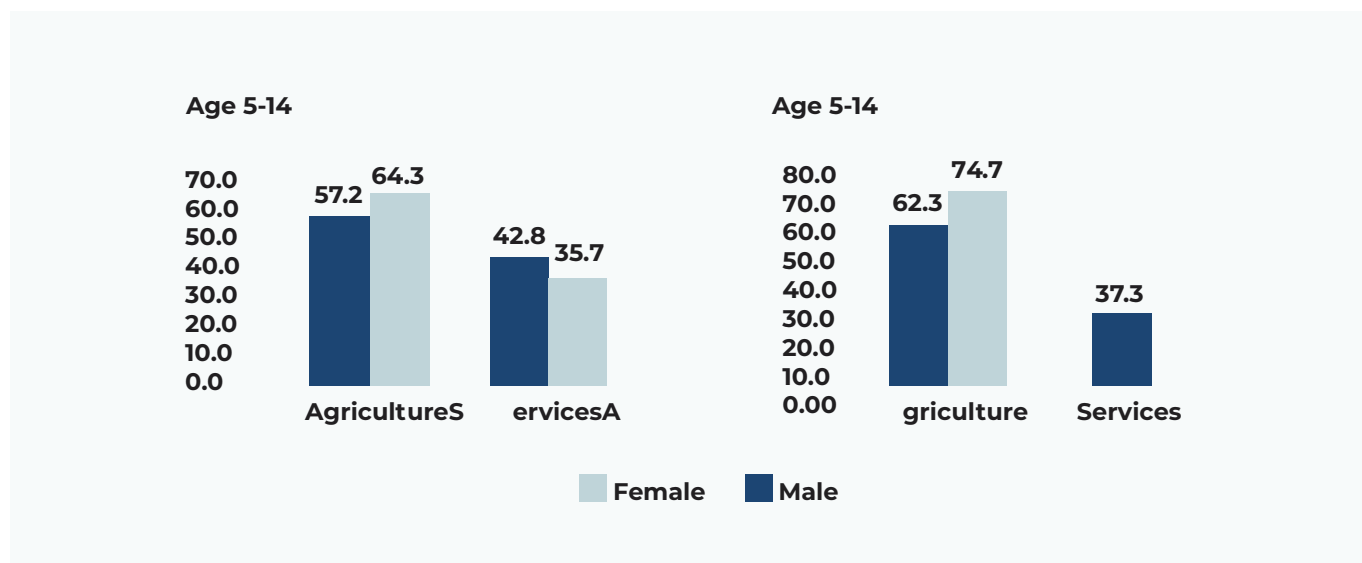
3.7.2. Infringements and risks

The “Serbia National Child Labour Survey”⁵⁴ conducted in 2021 by ILO and the Statistical Office of the Republic of Serbia reveals that 82,000 children in Serbia are in child labour, equivalent to 9.5% of all children. However, these numbers represent conservative estimates of child labour, because they exclude the worst forms of child labour other than hazardous work⁵⁵. According to the same survey, child labour is higher among boys and in non-urban areas, particularly for boys aged 12–14 residing in non-urban areas (27%). The child labour rate is the highest in the region of Šumadija and West Serbia (16%). There are no large differences in rates between other regions⁵⁶.

Child labour is more common in households with lower incomes. Children who were exposed to child labour most often cite “support to family income” as a reason why they work – this was stated by 43.8% of children aged 5 to 17, and as much as 70% of children aged 15 to 17⁵⁷. While the Child Labour Survey was not specifically designed to cover Roma settlements, the Roma population was included in the survey, with 4.15 per cent of Roma children aged 5–17 years who were interviewed.

For all age groups and genders, agriculture is the dominant branch of economic activity where child labour is found. Many children in rural areas are economically active and half of those economically active children are under 15. In general, children aged 5–11 work little, and primarily to help their parents in agriculture activities. Working hours are longer in the harvest season. For most children in rural areas, economic activities do not prevent them from attending school and therefore do not influence their development. Older children are more exposed to agriculture work that is hazardous. They work in dust or heat, carry heavy loads and work with dangerous machines, and are exposed to increased noise or chemicals. Hazardous work increases with the age of children⁵⁸.

Services, including domestic work, represent the second most dominant branch. Other branches of economic activity (industry) do not have significant shares of child labour⁵⁹. In relation to the status of work, children in Serbia are mostly observed as contributing family workers, comprising children working for their family when goods and services are produced for own final use or to be sold. Only a quarter of older children and a few younger children are employed for a remuneration⁶⁰. The table below shows the distribution of children in child labour by age and gender in the two most dominant branches:



Note: Low number of observations for females in services aged 15–17

Figure 1: Distribution of children in child labour by age and gender ⁶¹

⁵⁴ ILO; Statistical Office of the Republic of Serbia [SORS] (2021): Serbia National Child Labour Survey 2021. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_888666.pdf (last access: 18.01.2024).

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ ILO (2018): Rapid Assessment on Child Labour in Agriculture in the Republic of Serbia. Geneva. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_667353.pdf (last access: 20.01.2024).

⁵⁹ ILO; SORS (2021). Serbia National Child Labour Survey 2021. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_888666.pdf (last access: 18.01.2024).

⁶⁰ Ibid., p. 33

⁶¹ ILO; SORS (2021): Serbia National Child Labour Survey 2021, p. 32.

Strong gender patterns are observed: boys participate more in economic activities and girls are more engaged in household chores, explaining the highest percentage of boys in the services sector, i.e. work outside the household⁶².

According to the annual reports of the Labour Inspection for the past five years (2018 – 2022), the number of minors revealed at work during conducted inspections is very low when compared to the above stated results of the “Serbia National Child Labour Survey”. The Inspection revealed 18 minors with 13 different employers in 2021. For the other years in the period 2018-2022, the number of revealed minors varies between 13 and 33. Most represented sectors are services and agriculture, while other mentioned sectors include construction, production of sanitation material, and food processing. The Inspectorate reports on different types of offences – beside illegal work (work without contract or under the minimum age prescribed by law), common offences are the lack of parental/guardian consent and the lack of necessary medical approval⁶³.

Factors that contribute to the low number of revealed cases are to be sought in the capacities, i.e. overburden of the Inspectorate: besides being responsible for the supervision of enforcement of all other labour-related matters, the number of Inspectors is also insufficient - e.g. in the region identified as at most risk (Šumadija and West Serbia) which according to the latest Census (2022) has a population of 1,819,318, there is a total of 68 labour inspectors in 8 towns. Consequently, child labour in the most-at-risk sector agriculture (agricultural households) remains “invisible” both to the institutions and to the public⁶⁴.

3.7.3. Conclusion towards the risks: sectors, regional occurrences

Especially in the value chain of agricultural products, the risk of child labour is to be considered. This particularly concerns the regions Šumadija and West Serbia. Moreover, companies should not only rely on numbers published by the Serbian Labour Inspectorate, as the numbers have been consistently underreported over the past years due to its restricted capacities.

As the Serbian National Child Labour Survey does not provide the necessary data and the numbers published by the Labour Inspectorate are too limited to be considered representative, this study cannot provide solid information on other sectors or on the worst forms of child labour.

To thoroughly investigate the risk of child labour in companies, a comprehensive investigation by the inspectorate is recommended. There is also a need to raise awareness among purchasing and manufacturing companies of the need to prevent child labour in their operations.

3.8. Occupational Safety and Health

3.8.1. Legal framework

SCDDA

The SCDDA under its definition of human rights risks defines “the prohibition of disregarding the occupational safety and health obligations applicable under the law of the place of employment if this gives rise to the risk of accidents at work or work-related health hazards, in particular due to:

1. obviously insufficient safety standards in the provision and maintenance of the workplace, workstation and work equipment;
2. the absence of appropriate protective measures to avoid exposure to chemical, physical, or biological substances;
3. the lack of measures to prevent excessive physical and mental fatigue, in particular through inappropriate work organization in terms of working hours and rest breaks; or
4. the inadequate training and instruction of employees;⁶⁵”

Although the right to safe and healthy working conditions is considered a fundamental human right, as articulated in various international human rights instruments, the challenge for global businesses is in ensuring that workplaces are safe for all workers, in all locations of their business or supply chains, particularly if operating in countries in which national occupational health and safety frameworks are deficient, further enabling the absence of occupational health and safety culture at the workplace levels.

Serbian Law has ratified the ILO Occupational Safety and Health Convention, 1981 (No. 155) and Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

The Constitution of the Republic of Serbia, in the Article 60, among other rights related to the right to work, stipulates the right to safe and healthy working conditions⁶⁶.

The Government’s Strategy on Occupational Health and Safety for the period 2023-2027 is in the draft stage and yet to be adopted, after the public discussion period concluded on November 15th, 2023. This draft Strategy has the same overall objective as the Strategy for the previous period (2018-2022) - to decrease the number of workplace injuries by 5% in the period of its implementation. The specific objectives of the draft Strategy bring more focus on minimizing occupational health and safety hazards, promoting the occupational health and safety culture, and raising awareness,

⁶² ILO (2018): Rapid Assessment on Child Labour in Agriculture in the Republic of Serbia. Geneva.

⁶³ Annual Reports of the Labour Inspectorate, 2018-2022.

⁶⁴ ILO; SORS (2021): Serbia National Child Labour Survey 2021. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_888666.pdf (last access: 18.01.2024).

⁶⁵ Federal Law Gazette (22.07.2021): The Act on Corporate Due Diligence Obligations in Supply Chains, Section 2- Definitions.

⁶⁶ The Constitution of the Republic of Serbia. Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

strengthening the administrative capacities of the Directorate for Occupational Health and Safety and Labour Inspection⁶⁷, and introducing the electronic register of workplace injuries⁶⁸.

The Serbian Law on Occupational Health and Safety⁶⁹ was updated in April 2023, after 18 years. According to the EU Progress Report for Serbia for 2023, the new law is partially aligned with the EU acquis⁷¹. The aim of the new law is to establish comprehensive regulations and standards to ensure the safety, health, and well-being of workers in all sectors of the economy through a stricter penal policy, i.e. doubling the fines, introducing new measures and obligations for employers and introducing additional measures for the protection of the health of employees.

The new law introduces new terms such as: serious, unavoidable, and immediate danger; work from home; remote work; work environment; work at height, work at depth; worksite. In addition, the new law prescribes the employer's obligation to provide the employee with personal protective equipment in good condition and conduct training for its proper use.

The new law prescribes the employer's obligation to direct the employee, at the employee's request, to undergo medical examination that corresponds to the risks at the workplace at regular intervals, at the latest within five years of the previous examination. The costs of medical examinations are borne by the employer.

The new law also prescribes the employer's obligation to issue a work permit due to greater protection of employees when performing certain high-risk jobs (when performing work at height, in depth, in confined spaces, in spaces with potentially explosive atmospheres).

The novelty prescribed by the new law is that in certain high-risk activities, an employer who employs from 251 to 500 employees, is obliged to conclude a full-time employment agreement with at least two occupational safety and health advisors, and the employer who employs more than 500 employees is required to conclude a full-time employment agreement with at least three occupational safety and health advisors. In all other activities, an employer who employs more than 500 employees is obliged to conclude a full-time employment agreement with at least two occupational health and safety associates.

The new law establishes a register of injuries at work, which is maintained in electronic form by an administrative body within the Ministry of Labour, Employment, Veterans Affairs and Social Affairs. The register of injuries at work aims to contain accurate and up-to-date data on injuries at work and enables faster and more efficient determination of the facts necessary to exercise employees' rights from health insurance.

The new law entered into force on May 7th, 2023, and allows the employers a two-year period for complying with the newly introduced obligations.

3.8.2. Infringements and risks

The Ministry of Labour and Social Policy is responsible for occupational safety and health in Serbia and includes two administrative bodies active in the subject field, in particular the Occupational Safety and Health Directorate that, among other things, prepares legislation, and the Labour Inspectorate competent for supervision over its enforcement.

While performing the supervision in the area of occupational health and safety, the labour inspectorate controls risk assessment act, organization of duties regarding occupational health and safety, training of employees for safe work, jobs with increased risk, use of personal safety tools and equipment, use of working tools and equipment, use of hazardous substances, workplace conditions⁷².

In its 2022 Report, the Labour Inspectorate has established that 5% of employers have normed the rights, responsibilities and obligations regarding occupational health and safety in work contracts with employees. Most employers (81%) have regulated these matters in the general act, i.e. Rulebook on occupational health and safety. Only 5% of employers have occupational health and safety matters covered by the collective agreement, while 9% have not regulated these matters at all.

Also, according to the annual report of the Labour Inspectorate for 2022, 56% of employers have hired a licenced legal entity for performing occupational health and safety activities, 27% of employers perform these activities themselves or have designated one or more employees for the tasks, while 17% of employers did not regulate this matter in accordance with the Law on Occupational Health and Safety. In addition, the report underlines a widespread practice that one licenced legal entity is hired by many employers, which indicates the lack of quality in performing occupational health and safety activities.

According to the same report, 75% of employers have conducted the training for safe work, in accordance with the Law on Occupational Health and Safety, while 18% did not fulfil the obligation to train their employees.

Regarding personal protective equipment, the Inspectorate has established that employers in the risk assessment acts often do not assess whether the existing equipment is adequate to the identified hazards, nor which equipment would be needed to mitigate those hazards. The Inspectorate assesses the overall state of use of personal protective equipment as unsatisfactory, also considering that the respective

⁶⁷ The Ministry of Labour and Social Policy is responsible for occupational safety and health in Serbia and includes two administrative bodies active in the subject field, in particular the Occupational Safety and Health Directorate that, among other things, prepares legislation, and the Labour Inspectorate competent for supervision over its enforcement.

⁶⁸ Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja Republike Srbije [Ministry of Labor, Employment, Veteran and Social Affairs of the Republic of Serbia] (n.d.): Draft Strategy on Occupational Health and Safety 2023-2027. <https://www.minrzs.gov.rs/sr/dokumenti/predlozi-i-nacrti/uprava-za-bezbednost-i-zdravlje-na-radu-0> (last access: 16.12.2023).

⁶⁹ Law on Occupational Health and Safety. Official Gazette of the Republic of Serbia, n.35/2023.

⁷⁰ Source for the legal overview: BOPA (31.05.2023): Serbia: New Law on Safety and Health at Work. CEE Legal Matters. <https://ceelegalmatters.com/serbia/23363-serbia-new-law-on-safety-and-health-at-work> (last access: 20.12.2023).

⁷¹ European Commission (2023): Serbia 2023 Report, p. 119.

⁷² Labour Inspectorate (2022): The Annual Report of the Labour Inspectorate for 2022.

mandatory documentation in Serbian language is often lacking. Lack of training and lack of adequate protective equipment were also highlighted as most significant issues by union representatives interviewed for this study.

Jobs with increased risk were most frequently identified in the following sectors: construction, chemicals' production, explosives and pyrotechnics' production, tyres, metal processing, forestry.

Analysing the causes and circumstances which led to work injuries, the Inspectorate has established that the most common causes of injuries are: unsafe work at height, lack of use of required tools and personal protective equipment, most commonly helmets and belts, work in inadequately secured excavations, non-adherence to principles, protocols or lack of work-coordination, inadequate use of work equipment, lack of training on safe work, incomplete implementation of occupational health and safety measures, significant presence of illegal employment. Considering the specific hazards at work, the implementation of occupational health and safety measures, and the number of recorded work injuries, the Inspectorate underlines construction and industry as sectors at most risk. Furthermore, the report identifies construction workers of different profiles as the group at most risk.

The report highlights that employers often do not fulfil their obligation to report work injuries instantly, and within 24 hours the latest. It is also recognized that there is an issue with different methodologies of recording, analysing, and evaluating the data on work injuries, as well as with the efficient communication between different institutions responsible for the subject matter, which indicates that the actual number of injuries is higher than the reported one. This is also evident from reports of different institutions: in the Labour Inspectorate's report, 47 fatalities and injuries with fatal outcome were reported in 2022, while the Serbian Fund for Health Insurance brings data of 64 fatalities for the same period⁷³. Furthermore, the Serbian Fund for Health Insurance recorded the total of 21,864 injuries in 2022, while the Directorate for Occupational Health and Safety in its 2022 report states a total of 12,692 injuries.⁷⁴ Regardless of the difference in data, construction is the sector with most injuries in all reports, followed by industry, in particular process manufacturing. The report of the Directorate breaks the number of serious injuries by gender (67.35% men and 32.56% women⁷⁵), age group (30.52% injuries in the age group 46-55), and skills/educational level (four-year secondary education: 34.43%; three-year secondary education: 28.75%). The data on injuries by region shows Belgrade as the region with most recorded injuries, but besides considering its population and the high level of economic activity, there are no other indications of increased risks compared to the other regions.

According to the Inspectorate's report, the employers'

obligation to report any professional illness within three days of occurrence is commonly breached – according to 2022 data there were no cases of reported professional illness. In many cases, the illness is not treated as work-related, as the connection between working conditions and the illness remains unrecognized or undocumented.

In 2022, the Labour Inspectorate filed 1,324 offense charges for occupational health and safety offences, out of which 53 were filed against employees. In the same year, there were 807 finalized court cases filed in the previous period. The average amount of fines was low: 136,223.99 RSD (approx. 1,160 EUR). In addition, 125 cases were dismissed due to statute of limitation.

3.8.3. Conclusion towards the risks: sectors, regional occurrences

Serbia has ratified the ILO Conventions relating to occupational health and safety. The national legislation is partly aligned with the EU acquis. The latest amendments to the Law on Occupational Health and Safety were adopted in April 2023, with the two-year period for employers to comply with the new obligations.

Work-related injuries records held by different institutions with jurisdiction in the subject matter (Labour Inspectorate, Directorate for Occupational Health and Safety, Serbian Fund for Health Insurance) are not aligned, and offer different data on the total number of injuries and fatalities. However, the most at-risk sector by all evidence is construction. Besides the construction sector, jobs with increased risk were most frequently identified in chemicals' production, explosives and pyrotechnics' production, tyres, metal processing and forestry.

Most common causes of injuries, i.e. risk factors are: unsafe work at height, lack of use of required tools and personal protective equipment, most commonly helmets and belts, work in inadequately secured excavations, non-adherence to principles, protocols or lack of work-coordination, inadequate use of work equipment, lack of training on safe work, incomplete implementation of occupational health and safety measures, significant presence of illegal employment.

⁷³ Labour Inspectorate (2022): The Annual Report of the Labour Inspectorate for 2022.; Directorate for Occupational Health and Safety (2022): Report of the Directorate for Occupational Health and Safety for 2022.

⁷⁴ Directorate for Occupational Health and Safety (2022): Report of the Directorate for Occupational Health and Safety for 2022.

⁷⁵ In one case there was no data on gender.

3.9. Freedom of Association

3.9.1. Legal framework

SCDDA

The SCDDA, under its definition of human rights risks, defines “the prohibition of disregarding the freedom of association, according to which: a) employees are free to form or join trade unions, b) the formation, joining and membership of a trade union must not be used as a reason for unjustified discrimination or retaliation, c) trade unions are free to operate in accordance with applicable law of the place of employment, which includes the right to strike and the right to collective bargaining”.⁷⁶

Freedom of association and freedom to join trade unions are fundamental human rights guaranteed by major international human rights instruments, including the Universal Declaration of Human Rights and fundamental ILO conventions. As defined in the Article 2 of the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise Convention: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”.⁷⁷

Collective bargaining is closely linked to freedom of association. It is a fundamental right that is rooted in the ILO Constitution and reaffirmed as such in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Together with the freedom of association, collective bargaining is crucial for obtaining a balance between workers’ and employers’ respective interests, allowing to identify common and confronted ones, and reaching a mutual agreement. It is important to emphasize that the success of collective bargaining is closely dependent on the economic, institutional, political, and legal frameworks in which the process is conducted – that is why the level of development and exercising this fundamental right varies significantly between states.⁷⁸

Serbian law

Serbia has ratified the ILO Convention No. 87 on Freedom of Association and the Protection of the Right to Organise Convention (ratified in 2000) as well as the ILO Convention No. 98 on Right to Organise and Collective Bargaining Convention (ratified in 2000).

Freedom of association, including joining trade unions, and the right to strike are constitutional categories, stipulated in the Article 55 and Article 61 of the Constitution of the Republic of Serbia.

Article 13 of Serbian Labour Law states that employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable resolution of collective and individual labour disputes, consultation, information, and expression of their position on important issues in the field of labour. Under the Labour Law the term “employee” stands for a person within a so-called labour relationship i.e. has signed a labour contract. So, workers who signed a contract of special provisions of the Labour Law – so-called section of “Working Outside a Labour Relationship” (i.e. temporary and periodical work, special service contracts, contracts on representation and agency, contracts on training and advanced training, additional work contracts), are not considered as employees thus cannot invoke various labour rights, including rights pertaining to Freedom of Association and Right to Organise and Collective Bargain. This practically means that the Serbian Labour Law is in direct collision with the Serbian Constitution, and with the provisions of the ILO Conventions on Freedom of Association and Protection of the Right to Organise Convention (No. 87), and Right to Organise and Collective Bargaining Convention, which Serbia has ratified.

Trade unions in Serbia register with the Ministry of Labour, Employment, Veterans, and Social Affairs, without any previous approval. According to the Labour Law, it is the obligation of the employer to provide the registered trade union access to data and information relevant for trade union’s activities, as well as to provide technical conditions (e.g. adequate office space) for trade union’s work, if the union is representative. To be representative at the employer level, a trade union needs to gather at least 15% of all employees as its members. In addition to this criterion, it needs to be independent from state institutions and the employer, to be financed mainly from membership fees. In order to be representative at the national level, level of the territorial autonomy or local self-government level for a certain sector, a trade union needs to gather at least 10% of all employees in said sector as its members.

3.9.2. Infringements and risks

SCDDA

As a result of the historical and cultural legacy of the Yugoslav period, trade union density remains high in the public sector, and it is estimated at over 60%. On the other side, starting from the 1990ies, trade union density in the private sector has been in permanent decline. Exact and recent official data are not available, and the estimations vary from 20% to 30%.⁸⁰

⁷⁶ Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021, Section 2- Definitions. https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (last access: 12.01.2024).

⁷⁷ ILO (1948): Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:C087 (last access: 20.01.2024).

⁷⁸ Urdarević, Bojan (2021): Pravo na kolektivno pregovaranje. Dodatne analize pojedinih radnopravnih instituta kao podrška rešenjima iz Alternativnog modela Zakona o radu. Centar za dostojanstven rad. <https://cdsr Srbija.org/wp-content/uploads/2021/12/Dodatne-analize-2021.pdf> (last access: 26.01.2024).

⁷⁹ The Constitution of the Republic of Serbia. Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

⁸⁰ Eurofound (2012): Serbia: Industrial relations profile.

Common affiliation of trade unions with the political structures is also a consequence of historical legacy. It is deriving from the previous unitarism in unionization, and the belief that the unions' power is rather limited if not accompanied by political support.⁸¹ The extent to which different unions are affiliated to political structures varies, but the lack of cooperation between different unions remains widespread, resulting in weakening of the overall union power and potential.⁸²

The above, alongside the transformation process of privatization of state-owned companies and the economic crisis of 2008, in which trade unions failed to play a significant role in mitigating the consequences of inevitable job losses, has led to further deterioration of trust by the public. According to 2017 data, only 15 per cent of citizens have trust in trade unions.⁸³ An additional concern expressed by the stakeholders interviewed for this study is the extremely low participation of youth in unionizing, threatening their long-term sustainability and trans-generational succession.

The trade union landscape in Serbia is highly fragmented, with five rival peak organizations and a series of independent unions.⁸⁴ The European Trade Union Confederation recognizes only two Serbian trade union confederations: the Confederation of Autonomous Trade Unions of Serbia (CATUS – Savez samostalnih sindikata Srbije) and the United Branch Trade Unions (UBTU – UGS Nezavisnost). Both participate in the Socio-Economic Council at national level. Their self-declared membership is around 500,000 and 200,000 members. There are three more union confederations with significant membership rates: the Confederation of Free Trade Unions (CFTU – Konfederacija slobodnih sindikata), the Association of Free and Independent Trade Unions (AFITU – Asocijacija slobodnih i nezavisnih sindikata) and the United Trade Unions 'Sloga' (UTUS – Udruženi sindikati 'Sloga'), with self-reported membership of 180,000, 150,000 and 100,000. Independent analysts estimate the 'true' numbers at around half of self-reported membership, again putting the unionization rate at around 25–30%, similar to above-mentioned estimations.⁸⁵

Although being the most important mechanism of communication between trade unions and employers, social dialogue in Serbia remains underdeveloped and weak, in particular regarding the involvement of social partners in policy developments relevant to them.⁸⁶

The Social and Economic Council of the Republic of Serbia is an independent body that comprises representatives of the Government of Serbia, Association of Employers, and trade unions, with the main role to promote social dialogue and cooperation between the social partners to improve the economic and social conditions in Serbia.⁸⁷ In practice, however, it is inefficient and heavily dominated by the government, as evident from the facts that the General Collective Agreement has not been signed since 2011, and the minimum wage for the past 10 years was established by the government's decision, which is the option when tripartite consensus of social partners has not been reached. The Labour Law also contributes to this state of the social dialogue, as it only mentions it under provisions that norm other legal institutes, such as minimum wage and collective bargaining.⁸⁸

Collective bargaining in Serbia is regulated by the Labour Law, however, practical procedures, mechanisms, rights, and obligations for the collective bargaining partners are lacking, further resulting in the lack of favourable framework for stabilising the collective bargaining landscape.⁸⁹ According to the EU Progress Report for 2022, Serbia still needs to adjust the legal framework and to strengthen the capacity of social partners to foster collective bargaining.⁹⁰

Collective agreements with the employer are a dominant type of collective agreements.⁹¹ However, their exact number as well as the level of protection they provide is difficult to establish, as the Law allows that they are not publicly available. According to the Global Rights Index of the International Trade Union Confederation (ITUC), employers in Serbia often refuse to enter negotiations with the representatives of trade unions, unduly delayed negotiations, or circumvented workers' representation by entering into individual negotiations with workers.⁹²

The General Collective Agreement, which is, according to experts,⁹³ considered best practice in the context of providing the highest protection of workers' rights, was last signed in 2008 and expired in 2011. Special (branch) collective agreements are currently signed for different sectors within the public sector, and for state-owned enterprises, while in the private sector there are only two signed special collective agreements – in transportation and entertainment/music sectors. Since 2015, there have been no special collective agreements for the metal sector, food processing

⁸¹ Urdarević, Bojan (2021): Pravo na kolektivno pregovaranje. Dodatne analize pojedinih radnopravnih instituta kao podrška rešenjima iz Alternativnog modela Zakona o radu. Centar za dostojanstven rad.

⁸² Ibid.

⁸³ Ladjevac, Bojan (2017): Trade Unions in Serbia on the Move? Friedrich Ebert Stiftung

⁸⁴ Eurofound (2012): Serbia: Industrial relations profile. <https://www.ilo.org/dyn/travail/docs/2402/Eurofound%20Report%202012.pdf> (last access: 20.01.2024).

⁸⁵ Ibid.

⁸⁶ European Commission (2022): Serbia 2022 Report, p. 107

⁸⁷ Socijalno-ekonomski savet Republike Srbije [Social and Economic Council of the Republic of Serbia] (n.d.): About Us. <http://www.socijalnoekonomskisavet.rs/eng/o%20nama%20eng.htm> (last access: 21.01.2024).

⁸⁸ Reljanovic, Mario (2021): Socio-ekonomski saveti. Dodatne analize pojedinih radnopravnih instituta kao podrška rešenjima iz Alternativnog modela Zakona o radu. Centar za dostojanstven rad.

⁸⁹ Ladjevac, Bojan (2017): Trade Unions in Serbia on the Move? Friedrich Ebert Stiftung.

⁹⁰ European Commission (2022): Serbia 2022 Report, pp. 107-108.

⁹¹ According to the Serbian Labour Law, there are 3 types of collective agreements: (a) general collective agreement; (b) special collective agreements; and (c) collective contract with the employer. The general collective agreement is concluded for the territory of the Republic of Serbia. Special collective agreements are concluded: (a) for a specific branch, group, subgroup or activity, at the level of the Republic; (b) for a specific territory within territorial autonomy or local self-government, for all branches and activities that exist in that territory; (c) for certain groups of persons (artists, athletes, coaches, etc.), at different territorial levels; and (d) for public companies and public services. The collective agreement with the employer is concluded at the level of the employer as a legal or natural person (entrepreneur) who has employees.

⁹² ITUC GRI (2023): Right to collective bargaining. <https://www.globalrightsindex.org/en/2023/violations/right-to-collective-bargaining> (last access: 03.01.2024).

⁹³ Urdarević, Bojan (2021): Pravo na kolektivno pregovaranje. Dodatne analize pojedinih radnopravnih instituta kao podrška rešenjima iz Alternativnog modela Zakona o radu. Centar za dostojanstven rad.

sector, construction, agriculture, tourism, and tobacco industry.⁹⁴

Strikes are frequent in Serbia, but no consolidated data are available. While in the public sector strikes and other collective actions are largely about pay rises, in the private sector strikes occur mostly as a consequence of unsuccessful privatisations and restructuring, and include demands for unpaid wages, elimination of wage arrears, severance payments, and sometimes the scrapping of privatisation, restitution of workers' ownership rights and/or takeover of the firm by the government.⁹⁵ In the private sector, strikes and industrial action can take many forms (protests, traffic blockades, demonstrations) in various contexts, often in firms which are at the brink of bankruptcy or are not operating at all as a result, for example, of a failed privatisation.⁹⁶ Therefore, it is sometimes difficult to categorise industrial actions of workers whose firms are effectively closed. Often, these actions can include negotiations with local and central governments, including organised trips to Belgrade and mass protests to exert pressure on the government, i.e. relevant ministries.⁹⁷ Strikes occur almost exclusively at the company level, and it is assessed that trade unions in Serbia today are not in a position nor have the capacity to organise more substantial social protests or strike action.⁹⁸ Labour Law experts, including those interviewed for this study, agree that the existing Law on strike is outdated and non-aligned with international standards, which was also confirmed in the EU Progress Reports on Serbia.⁹⁹

According to the Global Rights Index of the International Trade Union Confederation (ITUC), intimidation, threats and reprisals against trade union representatives are widespread and include dismissals, transfers, demotions of workers and trade union members, or using threats of such measures to deter them from joining trade unions or engaging in trade union activities.¹⁰⁰

One of the indicative examples is the case of strike committee members in an automotive company in Central Serbia, who were placed on paid leave in May 2021. In June of the same year, management of the company were charged with misdemeanours by the Labour Inspectorate over attempts to break the strike, as thirteen workers who took part in the strike, including the entire strike committee, were illegally placed on leave, and the committee locked out of the plant.¹⁰¹ Physical attacks by the companies' private security forces have also been recorded, with outcomes varying from no charges for the attackers, to monetary fines.¹⁰²

3.9.3. Conclusion towards the risks: sectors, regional occurrences

Although being prohibited by national and international law, discrimination and retaliation against workers exercising their protected rights remains a pervasive problem in Serbia and can take many forms, including threats, intimidation, unlawful dismissal, or demotion.

The risks of infringement of the rights to freedom of association, collective bargaining, and the right to strike in Serbia are country-wide and can be present in all sectors, as there are significant shortcomings in the legal framework, while the social dialogue is weak and collective agreements are rare.

The following factors can indicate increased risk:

- A high percentage of workers in a company or sector who signed a contract for work that is considered "Working Outside a Labour Relationship", such as temporary and periodical work, special services, contracts on representation and agency, contracts on training and advanced training and additional work contracts. Examples of sectors with high presence of such contracts are agriculture, construction, tourism, and services.
- Privatized and restructured companies in the sector of process manufacturing. Reported examples of union busting and infringement of the right to strike include textile, automotive and metal companies.
- High unemployment rates and economic underdevelopment – the regions of South and South-eastern Serbia have the highest unemployment rates¹⁰³ and the same regions have the highest number of underdeveloped and highly underdeveloped municipalities.¹⁰⁴

⁹⁴ Ibid.

⁹⁵ Eurofound (2012): Serbia: Industrial relations profile. <https://www.ilo.org/dyn/travail/docs/2402/Eurofound%20Report%202012.pdf> (last access: 20.01.2024).

⁹⁶ More details on strikes in privatized companies: <https://www.cadtm.org/Labour-strikes-in-Serbia-the-Pit> (last access: 24.01.2024).

⁹⁷ Ibid.

⁹⁸ Ladjevac, Bojan (2017): Trade Unions in Serbia on the Move? Friedrich Ebert Stiftung.

⁹⁹ European Commission (2023): Serbia 2023 Report, p. 118.

¹⁰⁰ ITUC GRI (2023): Countries Global Rights Index 2023. <https://www.globalrightsindex.org/en/2023/countries/srb> (last access: 16.12.2023).

¹⁰¹ ITUC GRI (2023): Serbia - ITUC Survey of violations of trade union rights. <https://survey.ituc-csi.org/Serbia.html?lang=en#tabs-3> (last access: 16.12.2023).

¹⁰² Centar za istraživačko novinarstvo Srbije (n.d.): Napadi privatnog obezbeđenja. <https://www.cins.rs/baze-podataka/napadi-privatnog-obezbedenja/> (last access: 16.12.2023).

¹⁰³ SORS (2023): Stopa nezaposlenosti prema polu, regionu i starosnim grupama. <https://data.stat.gov.rs/Home/Result/240003020304?language-Code=sr-Cyrl> (last access: 20.12.2023).

¹⁰⁴ Development Agency of Serbia (n.d.): List of Municipalities by the Level of Development. <https://ras.gov.rs/uploads/2017/09/mapa-uredba-sr-eng.pdf> (last access: 20.12.2023).

3.10. Unequal treatment

3.10.1. Legal framework

SCDDA

The SCDDA, under its definition of human rights risks, defines “the prohibition of unequal treatment in employment, for example on the grounds of national and ethnic origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief, unless this is justified by the requirements of the employment; unequal treatment includes, in particular, the payment of unequal remuneration for work of equal value”.¹⁰⁵

Although being closely related concepts, unequal treatment and discrimination can have different meanings. The German General Act on Equal Treatment (German abbreviation: AGG) does not mention discrimination, but unequal treatment, since not every difference in treatment which entails a disadvantage necessarily has to be discriminating. The difference between unequal treatment and discrimination in employment is often defined in relation to the concept of “protected status”, i.e. national and ethnic origin, social origin, health status, disability, sexual orientation, age, gender, political opinion, religion or belief. Unequal treatment based on the protected status is always considered discrimination. In addition, discrimination is always illegal, while unequal treatment may or may not be illegal, depending on the circumstances.

Serbian law

Serbia has ratified ILO Convention No.111 on Discrimination (Employment and Occupation) and the ILO Convention No.100 on Equal Remuneration in 2000.

The prohibition of discrimination is a constitutional category, as Article 21 of the Constitution of the Republic of Serbia stipulates that any form of direct and indirect discrimination is prohibited, especially based on race, nationality, gender, social background, place of birth, religion, political or other belief, material status, culture, language, age, mental or physical disability. In addition, Article 15 guarantees equality between women and men.¹⁰⁶

Serbia’s legislative and institutional framework for upholding fundamental rights is broadly in place. The Law on Prohibition of Discrimination prohibits discrimination by business entities in the context of work and employment, as well as in the context of the provision of goods and services. According to the Law, protection from discrimination needs to be guaranteed to all workers, regardless of the form of their engagement. One of the most important provisions of the Law is the establishing of The Commissioner for the Protection of Equality,

an independent government institution with the mandate to issue recommendations and opinions on cases of discrimination, protect equality, and oversee the enforcement of anti-discrimination regulations.

The Gender Equality Law in Serbia was first passed in 2009 and amended in 2021. It is aligned with the Law on the Prohibition of Discrimination. The Law stipulates that employers must ensure equal access to rights to all workers, regardless of their gender and family status. These rights include equal access to employment and self-employment, occupation, promotion, and other rights related to employment and other forms of paid work engagement. The Law also introduces an obligation for employers to keep records on gender-disaggregated data, in total numbers and percentage, about the hiring stage, employment, qualifications, executive levels, wages, and turnover. In addition, employers which employ over 50 employees have the obligation to report annually on the gender equality assessment in the organization, reasons for any gender disbalance in the employee structure, risk-management plan and its implementation, and other implemented mitigation measures. Reports are submitted to the Ministry of Human and Minority Rights.

The Labour Law also prohibits direct and indirect discrimination of job seekers, as well as employees, regarding gender, birth, language, race, skin colour, age, pregnancy, health condition, disability, nationality, religion, marital status, family obligations, sexual orientation, or gender identity, political or other belief, social origin, property status, membership in political organizations, trade unions, or any other personal characteristic. In addition, it guarantees equal wages for equal work (or work of the equal value). However, the Labour law also recognizes so-called “work outside labour relationships” and does not consider workers with contracts under this regime to be employees, hence preventing them to invoke various labour rights, including rights pertaining to prohibition of discrimination, leaving this group of workers vulnerable and at increased risk. Serbia adopted new strategies on anti-discrimination and Roma inclusion, as well as action plans on gender equality and Roma inclusion.¹⁰⁷ The action plan for the implementation of the Strategy on Prevention and Protection against Discrimination, including the related funding, was adopted in October 2022, for the period 2022 – 2030. The Strategy and the related action plan have four specific objectives: 1) National legal framework aligned with the international standards and practice on anti-discrimination; 2) Anti-discrimination perspective systemically introduced into creation, implementation and monitoring over public policies; 3) Improved equality and increased social inclusion of groups in increased risk of discrimination; 4) Improved system for prevention and protection against discrimination.

In its report on Serbia for 2022, the European Commission underlines that, although the legislative framework is in place, it still needs to be consistently and efficiently implemented. One of the recommendations

¹⁰⁵ Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021, Section 2- Definitions. https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (last access: 12.01.2024).

¹⁰⁶ The Constitution of the Republic of Serbia. Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

¹⁰⁷ European Commission (2022): Serbia 2022 Report, p. 5.

of the report for the Serbian government is to start implementing the strategies on anti-discrimination and gender equality.

3.10.2. Infringements and risks

Annual reports of the Commissioner for Protection of Equality show that complaints related to the area of employment are most frequent in the total number of received complaints, alongside those related to the processes with public institutions (courts, municipalities, ministries etc.).

	2020	2021	2022
% of complaints related to the area of employment	27.3%	24.6%	21.1%

Table: % of complaints related to the area of employment in the total number of complaints received by The Commissioner for Protection of Equality in the period 2020-2022 ¹⁰⁸

Further analysis of the Commissioner's reports shows that the most frequent basis for discrimination complaints in the area of employment are: gender, marital and family status, health, age, membership in political or trade union organizations, disability, nationality, or ethnic background. Besides the Commissioner's reports, other relevant data indicate that women are at increased risk of discrimination in the labour market. The position of women on the labour market in Serbia remains unfavourable in comparison to the position of men. The employment rate for men (20–64-year-olds) is 14.9 percentage points higher and their activity rate 15.2 percentage points higher than those for women.¹⁰⁹ According to data by the country's statistics office, men earned 8.8 percent more than their women counterparts. The largest pay gap was in the financial and insurance sectors, where women had salaries as much as 21 percent lower than their male colleagues. The European Institute for Gender Equality reported that the employment rate for women was low and women above the age of 45 are less likely to find work.¹¹⁰

Although harassment, sexual harassment, and sexual blackmail in relation to labour are explicitly prohibited, including during hiring, professional development, or promotion, 36% of women report that they had experienced at least one form of sexual harassment at work compared to 12% of men.¹¹¹ More specifically, 29% of women who had responded that they had experienced some form of workplace sexual harassment, had been subjected to sexual gestures, jokes, or sounds.¹¹²

Another common aspect of gender-based discrimination is discrimination based on maternity and family status. Although the legislation grants both maternity and paternity leaves, gender-based stereotypical preconceptions persist about childcare and household work being a woman's responsibility. Women worked 2.5 hours more per day than men on care work for children and the elderly. This is one of the largest gaps in the field of 'time' (16.2 points) between the EU-27 and Serbia in the 2021 gender equality index. Amendments to the Law on financial support to families with children, adopted in December 2021, removed some discriminatory provisions in family leave rights, but the legislation needs to be further aligned with the EU acquis with regards to paternity, parental and maternity leave rights. This includes further defining these rights in Serbian legislation in line with their definitions and purpose in the EU acquis.¹¹³

An indicative case of infringement of maternity/parental benefits is the case of Snezana Pesovic, who in 2018 went public with a case of discrimination against her employer. Pesovic claimed that despite being an employee for 12 years, she remained unregistered and that her employer did not make health insurance or pension contributions, as the law requires. Upon learning she was pregnant, Pesovic asked her employer to register her so she could receive maternity benefits. Her employer agreed but only under the condition that she would pay the contributions herself and sign a voluntary termination agreement allowing the employer to terminate her at the employer's convenience. By the end of her maternity leave, the benefit she was receiving was less than the contributions her employer was forcing her to make. Her employer invoked the voluntary termination option when her case appeared in media. The Commissioner for the Protection of Equality agreed to take the case and represent Pesovic in a lawsuit against her employer. The Appellate Court issued a final verdict in December 2021, which confirmed the High Court verdict from April 2021, finding that the defendant committed an act of discrimination.¹¹⁴

It can be safely assumed that many cases remain unreported - an independent survey conducted in 2021 indicated that knowledge on where to report gender-based discrimination remained low, likely contributing to lower reporting rates overall.¹¹⁵

¹⁰⁸ Poverenik za zaštitu ravnopravnosti [Commissioner for the Protection of Equality] (2022): Annual reports of the Commissioner for Protection of Equality 2020- 2022. <https://ravnopravnost.gov.rs/rs/izvestaji/> (last access: 15.01.2024).

¹⁰⁹ European Commission (2022): Serbia 2022 Report, p. 109.

¹¹⁰ United States Department of State (2023): 2022 Country Reports on Human Rights Practices: Serbia. Bureau of Democracy, Human Rights, and Labor. state.gov/reports/2022-country-reports-on-human-rights-practices/serbia (last access: 15.01.2024).

¹¹¹ Kvinna till Kvinna Foundation (2022): Gender-based Discrimination And Labour In Serbia. kvinna.org/wp-content/uploads/2022/02/EU_Gender_Labour_2022_ENG.pdf (last access: 16.01.2024).

¹¹² Ibid.

¹¹³ European Commission (2022): Serbia 2022 Report, p. 109.

¹¹⁴ Snezana Pesovic case: www.state.gov/reports/2022-country-reports-on-human-rights-practices/serbia (last access: 20.01.2024).

¹¹⁵ European Commission (2022): Serbia 2022 Report, p. 109.

Roma are one of the most vulnerable groups in Serbia, facing a vicious circle of systemic social exclusion, which includes extreme poverty, lack of access to education and employment, and discrimination. Although increased access to education and employment are recognized in public policy as key in breaking the circle of exclusion, the numbers are not encouraging only 64% of Roma children complete elementary education, comparing to 99% of children in the general population. Out of this number, only 56% transit to secondary education.¹¹⁶ When it comes to employment, 60% of Roma report to have faced discrimination in the hiring process, and 15% have experienced discrimination in the workplace, although the latter percentage needs to be interpreted in correlation with the overall low employment rate among Roma population.¹¹⁷ A low level of education further leads to access to low-qualified and low-wages jobs only, with little or no chance of advancement, perpetuating the poverty and social exclusion cycle. Furthermore, due to the same factors, Roma are at higher risk of working in informal, temporary, or seasonal employment, limiting their labour rights including the protection from discrimination.

Although the legal framework for protection of persons with disabilities from discrimination is in place, they are still among the groups at the highest risk from discrimination. The factors behind such situation are multiple and complex and include lack of access to education (often including physical non-accessibility of educational institutions) leading to low-education levels, non-adequate workplaces or working conditions, and stereotypes and misconceptions about work ability of persons with disabilities.

The Law on professional rehabilitation and employment of persons with disabilities, adopted in 2009, defines a recruitment quota system for persons with disabilities. Employers of 20 to 49 employees are required to hire one person with disabilities, and employers need to hire one more disabled person for every additional 50 employees, in accordance with the quota system. If an employer does not comply, the law stipulates that a legal entity is liable to fines up to a maximum of 1,000,000 dinars. Employers with more than 20 employees may opt out by paying a monthly charge up to half of the average salary to a national fund for each unfilled position reserved for a disabled person within the quota system. The amount is not fixed, and tracks increases of the average wage, adjusting on a monthly basis. According to the Article 25 of the Law on professional rehabilitation and employment of persons with disabilities, all newly established companies are exempt from paying the fees foreseen by the quota system during the first 24 months since their establishment/registration by the Agency for

Public Registries. This hides a potential hazard that a company owner might rename their company (by officially closing it down and opening under a different name) and thus avoid paying the penalty foreseen by the quota.¹¹⁸

3.10.3. Conclusion towards the risks: sectors, regional occurrences

Although the legislative framework for protection from discrimination is in place, it still needs to be consistently and efficiently implemented. Relevant reports and supporting data indicate that women, Roma, and persons with disabilities are groups at high risk of discrimination. This risk is increasing in cases of intersectionality between these vulnerable groups (e.g. Roma women, women with disabilities).

Sectors with prevalence of low-qualified jobs (e.g. agriculture) indicate a higher risk, as well as the significant presence of “work outside the employment” contracts (seasonal, temporary, and occasional work) which offer limited or no protection of labour rights, including protection from discrimination.

3.11. Adequate living wage

3.11.1. Legal framework

SCDDA

The German Supply Chain Act stipulates in Sec. 2 (2) No. 8 “the prohibition of withholding an adequate living wage; the adequate living wage amounts to at least the minimum wage as laid down by the applicable law and, apart from that, is determined in accordance with the regulations of the place of employment.”¹¹⁹

The right to adequate wage is a human right prescribed by international law: The International Labour Organization (ILO) Constitution (1919), The Universal Declaration on Human Rights (1948), The International Covenant on Economic, Social and Cultural Rights (1966), and the ILO Convention No.131 on Minimum Wage Fixing (1970). It has also been defined as a fundamental social right in Europe: in The European Social Charter (1961), The Community Charter of Fundamental Social Rights for Workers (1989), and the European Pillar of Social Rights (2017).

¹¹⁶ Regional Cooperation Council (2022): Strategy for Social Inclusion of Roma in the Republic of Serbia 2022-2030, pp. 29-30.

¹¹⁷ The Commissioner for Protection of Equality (2021): Perception of Roma community on discrimination, pp. 23-25.

¹¹⁸ ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe (2019): “I couldn't wait to get started” - Voice from inclusive workplaces in the Republic of Serbia, pp. 6-7.

¹¹⁹ Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021, Section 2- Definitions. https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (last access: 12.01.2024).

The Universal Declaration on Human Rights, Article 23, states: “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”¹²⁰ The International Covenant on Economic, Social and Cultural Rights, Article 7, states: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: [...] (II) A decent living for themselves and their families in accordance with the provisions of the present Covenant”.¹²¹

Withholding the adequate living wage needs to be considered in the context of consequences it incurs for the individual and the society. Anyone whose wage does not enable them to fulfil fundamental needs for themselves and their families faces the consequences of poverty: food insecurity, inadequate housing, difficulty to access education and healthcare, lack of social security and the exclusion from political and cultural life. Enabling and fostering substandard labour as a competitive advantage for investments, represents a breach of the international labour standards, and can lead to inability to create stable high-skilled jobs, resulting in slowed economic growth.¹²²

Legal experts and human rights advocates, including the ones interviewed for this study, agree that differentiating between minimum wage and adequate living wage is a false dilemma. If the minimum wage does not enable decent living to workers and their families, the right to adequate living wage is not exercised. Hence advocating for the concept of adequate wage equals advocating that the minimum wage is also the living wage.¹²³

SCDDA does not contain a precise definition of the term “adequate wage”, stating that “the adequate living wage amounts to at least the minimum wage as laid down by the applicable law and, apart from that, is determined in accordance with the regulations of the place of employment.” In the Frequently Asked Questions published by BAFA, it is further explained that “the local statutory minimum wage only suffices as a general rule and is not adequate in every case. That said, the “adequate living wage”¹²⁴ is not necessarily higher than the statutory minimum wage”. Furthermore, it is explained that “According to the wording of the Act, the standards that apply at the place of employment must be applied. If the enterprise is not able to determine a method of calculation that is recognized at the place of employment, it chooses, at its own discretion, one of the established methods (e.g., the Anker Methodology). The choice of method

of calculation and a short explanation must be recorded.”¹²⁵

Serbian law

Although Serbia has ratified the above-mentioned international conventions setting standards for this topic, the international bodies (European Committee for Social Rights and the Committee for Economic, Social and Cultural Rights) expressed their concerns regarding the way the minimum wage is defined in the Serbian Labour Law, specifically about it not taking into account costs of living and the inputs of social partners, not being revised regularly, and being insufficient to ensure decent standard of living.

Serbian Labour Law mentions the “right to an adequate wage” among employees’ rights, but this notion is not further defined in the following articles of the Law (nor are other commonly used terms, such as “living wage”, “reasonable wage”, “decent wage”). The Labour law defines the notion of “minimum wage”, which is determined in September each year for the following year by the Socio-economic council that consists of the Government, representative unions, and representative employers’ associations. If the Council does not reach a consensus within 15 days of negotiations’ beginning, the decision is made by the Government. For more than 10 years, consensus between the parties has not been reached, and the decision has been made by the government.

The Serbian Labour Law distinguishes between the minimum and the contracted wage – the minimum wage cannot be a contracted wage, but the wage that an employer introduces by an official decision for a time-limited period in the case it cannot pay its employees the contracted wage, due to business or financial difficulties.

Furthermore, the minimum wage as defined in the Law applies only to employees i.e. workers with employment contracts, while for other types of work engagement (e.g. temporary work, seasonal work) the minimum wage is not guaranteed.

¹²⁰ United Nations (1948): Universal Declaration on Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last access: 16.12.2023).

¹²¹ United Nations (1966): The International Covenant on Economic, Social and Cultural Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (last access: 16.12.2023).

¹²² Bradaš, Sarita (2021): Pravo na adekvatnu zaradu. Dodatne analize pojedinih radnopravnih instituta kao podrška rešenjima iz Alternativnog modela Zakona o radu. Centar za dostojanstven rad.

¹²³ Ibid.

¹²⁴ Federal Ministry of Labour and Social Affairs (2023): Supply Chain Act FAQ. <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html#doc3a956fcc-c35e-4655-a96a-6a39a1a0a2cfbodyText9> (last access: 20.12.2023).

¹²⁵ Ibid.

3.11.2. Infringements and risks

For 2024, the net minimum wage is set by the Serbian government at 271 RSD (2,11€) per hour (47,154 RSD or 402€ per month), which represents an increase of 17.8% compared to the previous year. The unions' request was to set the net minimum wage at the level of the minimum market basket, the indicator set by the government, which according to the latest available data (June 2023) equals 52,155.31 RSD or 449€.

Although being two different concepts in the Serbian Labour Law, in practice, the minimum wage is often considered to be a contracted wage. State institutions remain without a reaction to this widespread practice – annual reports of the Labour Inspectorate do not provide any data about the supervision of the institute of minimum wage, while in court practice interpretations benefiting the employers prevail.¹²⁶

Data of the Fiscal Council also reveal the scale of paying the minimum wage: 20% of employees in Serbia receive the minimum wage, which makes Serbia the European record holder for the percentage of employees on the minimum wage. In comparison, the percentage of workers receiving a minimum wage in Germany is 2-5%.¹²⁷

In June 2022, three trade unions and eighteen organizations signed the 'Living Wage Declaration' that advocates to include the calculation of the real cost of living in the official statistics of the Republic of Serbia and become a parameter when determining the minimum wage, and to introduce the institute of "living wage" in the Labour Law. According to the initiators of this platform, only 10% of employees in Serbia receive a living wage.

The last available official data provide additional insight and context about the wages in Serbia. According to the Research on wage structure of the Serbian Statistical Office¹²⁸, based on 2018 data, 17.86% of workers in Serbia receive a low wage. In this research, wages equal to or less than 2/3 of the gross hourly median wage are considered "low wages".

When disaggregated by sector, the highest percentage of workers with low wages is in accommodation and food services sector (37.5%), administrative and assistance services (34.1%), construction (29.8%), art, entertainment, and sports (28.4%), retail and wholesale (25.9%). Regarding company size, the percentage is the highest in small enterprises with 10-49 employees¹²⁹. Regarding the type of contract, the percentage is significantly higher among workers with contracts for temporary and occasional employment (39.03%) and

determined period contracts (27.31%), compared to the undetermined period contracts (15.07%).

3.11.3. Conclusion towards the risks: sectors, regional occurrences

The Serbian legal framework contains the institute of minimum wage, however unions, human rights advocates, and even international bodies such as the European Committee for Social Rights and the Committee for Economic, Social and Cultural Rights agree that nor its definition nor the practice are sufficient to ensure that the minimum wages enable decent living standards.

In addition, the minimum wage, as defined in the Labour Law, applies only to employees i.e. workers with employment contracts, while for other types of work engagement (e.g. temporary work, seasonal work) the minimum wage is not guaranteed.

Indications for high risk are:

- Businesses operating in sectors with high percentage of workers with low wages: manufacturing industry, accommodation and food services sector, administrative and assistance services, construction, art, entertainment and sports, retail and wholesale;
- Small businesses with 10-49 employees;
- Businesses with high percentage of low-skilled jobs;
- Businesses in underdeveloped regions (South and South-eastern Serbia).

3.12. Unlawful Eviction and Resettlement

3.12.1. Legal framework

SCDDA

The SCDDA, under its definition of human rights risks, defines "the prohibition of unlawful eviction and the prohibition of unlawful taking of land, forests and waters in the acquisition, development or other use of land, forests and waters, the use of which secures the livelihood of a person".¹³⁰

In the context of SCDDA, it is important to distinguish between unlawful eviction/resettlement, and involuntary resettlement.

¹²⁶ Bradaš, Sarita (2021): Pravo na adekvatnu zaradu. Dodatne analize pojedinih radnopravnih instituta kao podrška rešenjima iz Alternativnog modela Zakona o radu. Centar za dostojanstven rad.

¹²⁷ Ibid.

¹²⁸ Republički zavod za statistiku Srbije [Republic Institute of Statistics of Serbia] (2020): Istraživanje o strukturi zarade, 2018 [Wage structure survey, 2018]. <https://www.stat.gov.rs/sr-latn/publikacije/publication/?p=12774> (last access 20.12.2023).

¹²⁹ The research does not include micro companies with less than 10 employees.

¹³⁰ Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021, Section 2- Definitions. https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (last access: 12.01.2024).

Involuntary resettlement of populations can be caused by a variety of triggers, including natural disasters, such as earthquakes, hurricanes, and floods, political events, such as wars and internal conflicts, and also by development/infrastructure projects. Involuntary resettlement occurs when affected individuals or communities do not have the right to oppose land purchase, resulting in relocation, but these are not necessarily at the same time unlawful. Land purchase by the state, or expropriation, is common in infrastructure projects, and in all countries of the world, governments are legally required to pay “just” or “fair” compensation for expropriated private property.¹³¹ However, the implementation of such regulations varies significantly worldwide, and furthermore, the repercussions of involuntary resettlement cannot be exclusively measured in economic terms, but can also result in disruption of livelihoods, and potential breakdown of communities.¹³²

Private sector projects, most notably in the mining sector, can also cause involuntary, and potentially unlawful resettlement, with the same consequences described above. Considering the scope of SCDDA, i.e. regulating the obligations of businesses along their supply chains, only the risks related to resettlement caused by private sector projects are going to be analysed in this study.

Serbian law

Both the right to adequate housing and the right to be free from forceful evictions are not specifically protected under the Constitution of the Republic of Serbia. However, Serbia’s constitutional framework guarantees the right to adequate housing by requiring the direct implementation of the human and minority rights protected by the Constitution, widely accepted principles of international law, and ratified international treaties and laws (Article 18).

Article 58 of the Constitution guarantees the peaceful tenure of a person’s own property as well as any property rights acquired via legitimate channels. The Article stipulates that a property right may only be revoked or limited in the case of a valid public interest as defined by law and only in exchange for compensation that cannot be less than market value.

The legislation regarding involuntary resettlement is divided into various laws that are classed according to the subjects they govern. These include the General Administrative Procedure Law, the Execution and Security Law, the Housing Law, the Planning and Construction Law, the Communal Services Law, and the Expropriation Law. All duties resulting from

recognised international treaties are included in this legislation.

According to the Business Centre for Human Rights’ report “Baseline assessment: implementation of the UN Guiding Principles on Human Rights and Business” (2019), although Serbia has a sufficient set of laws to safeguard property rights, these rights might be slow to enforce.¹³³

One of the most visible shortcomings of the Serbian legal system is that it does not give the right to appropriate housing as a “stand-alone right,” alternative housing, a prohibition on forced evictions, and other legal safeguards. The legislation requires that court orders for forcible evictions be carried out only in combination with protections for the persons being evicted. In its 2019 report, the Belgrade Centre for Human Rights finds that these safeguards are either non-existent or insufficient. Competent entities are hesitant to enforce applicable legislative provisions that benefit evictees, particularly when it comes to private property concerns.

3.12.2. Infringements and risks

According to international standards and guidelines (e.g. The United Nations’ Basic principles and guidelines on development-based evictions and displacement¹³⁴, The World Bank Involuntary Resettlement Sourcebook¹³⁵) the assessment, planning and execution of resettlement must be timely and inclusive. Several cases recorded in Serbia indicate the lack of timeliness and inclusivity: most recent is the case of Veliki Krivelj village in Eastern Serbia, which is planned for displacement due to the development of the nearby mine operated by the Chinese mining company Zijin. The residents of Veliki Krivelj urged the local and national governments and the company on several occasions to accelerate the resettlement process, as the mine’s operations continued to develop regardless of the resettlement process advancement, and came to significantly affect their quality of life, including health and safely and livelihoods¹³⁶. In addition, the residents claim that the recently adopted proposal does not contain precise information about the cut-off dates and compensations value.¹³⁷

Another case to be mentioned due to the high level of raised public concern, although it is related to the public infrastructure development, is the involuntary resettlement of the informal Roma settlement during the Gazela Bridge Rehabilitation project in Belgrade in 2009, funded by the EBRD and the European Investment Bank. Amnesty International reported that it considers that the EBRD failed to carry out

¹³¹ The World Bank (2004): Involuntary resettlement: planning and implementation in development projects, p. 24.

¹³² Ibid.

¹³³ Belgrade Business Center for Human Rights (2019): Baseline assessment: implementation of the UN Guiding Principles on Human Rights and Business, p. 25.

¹³⁴ United Nations Human Rights Office of the High Commissioner (n.d.): Special Rapporteur on adequate housing as a component of the right to an adequate standard of living A/HRC/4/18, Annex 1. https://www.ohchr.org/sites/default/files/Documents/Issues/Housing/Guidelines_en.pdf (last access: 12.01.2024).

¹³⁵ The World Bank (2004): Involuntary resettlement: planning and implementation in development projects. <https://openknowledge.worldbank.org/server/api/core/bitstreams/c1454604-7bf7-534f-9530-afb8a66c9c99/content> (last access: 12.01.2024).

¹³⁶ Euronews Srbija (2022): Meštani sela Krivelj tri godine čekaju iseljenja zbog rudnika: “Nadamo se da ćemo konačno videti plan”. <https://www.euronews.rs/srbija/drustvo/38491/mestani-sela-krivelj-tri-godine-cekaju-iseljenja-zbog-rudnika-nadamo-se-da-cemo-konacno-videti-plan/ve> (last access: 12.01.2024).

¹³⁷ Stojanović, Milan (2023): Svađa i incident: Uprkos protivljenju meštana, usvojen predlog o preseljenju Krivelja. <https://n1info.rs/vesti/kakva-je-sudbi-na-krivelja-ministarka-kaze-postignut-dogovor-mestani-da-ne-znaju-s-kim/> (last access: 12.01.2024).

adequate human rights due diligence in order to identify potential negative human rights impacts in advance of the planned resettlement, not adhering to its own guidelines and policies, and that the affected Roma community was not adequately consulted nor all of its members treated equally in the process (e.g. the different provision for those with or without the residence in Belgrade)¹³⁸. This case underlines the importance of thorough and inclusive due diligence processes in the situations involving or affecting marginalized and vulnerable groups.

3.12.3. Conclusion towards the risks: sectors, regional occurrences

Due to the nature of the risk of involuntary resettlement, i.e. its inherent link to development-projects and expropriation regulations, the adequacy of the legal framework and the state's capacity and willingness to enforce it, are crucial for the risk's mitigation. According to the Business Centre for Human Rights' report "Baseline assessment: implementation of the UN Guiding Principles on Human Rights and Business" (2019), although Serbia has a sufficient set of laws to safeguard property rights, these rights might be slow to enforce.

Projects involving international financial institutions (IFIs) may indicate a more robust approach to prevention of human rights violations, as IFIs have their own detailed guidelines and standards on the matter. Still, as the above-cited Amnesty International's report shows, the risk remains present.

Due to the nature of the industries, public infrastructure/construction and mining are sectors at high risk. While risks in the construction of public infrastructure can be present country-wide, the risks in the mining sector are prevalent in the areas of large operations: Eastern Serbia and the Belgrade region (Kolubara Mining Basin).

related to human rights abuses. Businesses can impact several human rights proclaimed in the Universal Declaration of Human Rights¹³⁹ by their insufficient or inadequate management of the security dimension. These human rights include: the rights to liberty and security of person; the right to freedom of assembly; the right to strike; the right to health and ultimately the right to life. While states have traditionally been considered to have a monopoly on the use of force, security functions have increasingly been contracted out to the private sector worldwide. The cases of human rights abuses committed in relation to business activities are many around the world¹⁴⁰, and affected rights-holders include both workers and communities.

Hence The German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (SCDDA), under its definition of human rights risks, defines "the prohibition of the hiring or use of private or public security forces for the protection of the enterprise's project if, due to a lack of instruction or control on the part of the enterprise, the use of security forces: is in violation of the prohibition of torture and cruel, inhumane or degrading treatment; damages life or limb; or impairs the right to organise and the freedom of association."¹⁴¹

Serbian law

The private security sector in Serbia was initially developing in a "legal vacuum" as it was not normed by a dedicated law, but in an overlap of more than ten different laws applicable to it. This resulted in numerous anomalies such as total lack or inadequate training and non-defined authorities. The Law on Private Security¹⁴² was eventually adopted in 2013, defining the conditions for registering and licensing the private security companies themselves, as well as the conditions that their employees need to meet. The Law prescribes mandatory training, licensing, authorities of the employees, mandatory risk assessment, and the supervision over the employees and the companies providing private security services. This provided a basis for professionalization of the sector, although the challenges in practice remain, deriving from the lack of supervision of the quality of the mandatory training and distinction between authorities of the private security forces and state security forces which is not detailed enough in the Law.¹⁴³

From the perspective of businesses' impact on human rights, the most controversial measures that the Law allows private security forces to use are coercive measures, temporary detention of persons, and temporary seizure of possessions. Although the circumstances in which these measures can be implemented are defined in the bylaws¹⁴⁴, the mandatory training for private security companies'

3.13. Use of Private Security Forces

3.13.1. Legal framework

SCDDA

Privatization of the security sector has contributed to more effective and more efficient use of resources in this area but has also brought numerous challenges

¹³⁸ Amnesty International (2014): How the EBRD's funding contributed to a forced eviction in Belgrade, Serbia. <https://www.amnesty.org/es/wp-content/uploads/2023/06/eur700062014en.pdf> (last access: 16.01.2024).

¹³⁹ United Nations (1948): Universal Declaration of Human Rights. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last access: 16.12.2023).

¹⁴⁰ Amnesty International (n.d.): Holding Private Security Contractors Accountable for Human Rights Abuses. <https://www.amnestyusa.org/updates/holding-private-security-contractors-accountable-for-human-rights-abuses/> (last access: 16.12.2023).

¹⁴¹ Federal Law Gazette (2021): Act on Corporate Due Diligence Obligations in Supply Chains Of July 16 2021, Section 2, article 2, para 11, https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=4 (last access: 12.01.2024).

¹⁴² Law on Private Security. Official Gazzete of the Republic of Serbia, n. 104/2013, 42/2015 and 87/2018.

¹⁴³ Petrovic, Predrag (2021): Anđazovanje privatnog obezbeđenja u javnim službama i ustanovama, Grupa 484.

¹⁴⁴ Pravilnik o načinu primene ovlašćenja službenika obezbeđenja. Sl. glasnik RS, br. 59/2019.

employees does not cover the examples of potential complex situations with overlapping or unclear circumstances.¹⁴⁵

companies' employees, and the lack of capacity of the institutions to provide adequate oversight leave space for risk of potential human rights abuses.

3.13.2. Infringements and risks

According to the 2021 data of the Ministry of Interior, there are 1,400 registered companies for private security in Serbia, employing around 35,000 people.¹⁴⁶ Data on reported human rights abuses by private security forces are scarce, and it is expected that many remain unreported. One available database compiled by the Centre for Investigative Journalism (CINS) was launched in 2014. This database holds data on 13 separate cases of human rights abuse in companies. The reported cases include violent actions against community members, workers on strike, former workers, and union representatives¹⁴⁷.

In recent years, cases that have raised most attention of the public are attacks on environmental activists by private security forces in the hydro power and mining sectors, as well as the use of private security to prevent access of foreign workers, the media and human rights activists. In the village of Rakita, in municipality of Babusnica in South-eastern Serbia, several cases of use of physical force against local environmental activists were recorded by the media during the construction of the mini hydro power plant.¹⁴⁸ On the territory of Bor and Majdanpek in Eastern Serbia, private security forces hired by a mining company used physical force to remove and intimidate local environmental activists on several occasions, as the media reported.¹⁴⁹ In Zrenjanin, the region of Vojvodina, private security forces prevented human rights NGOs and journalists from talking to migrant workers from Vietnam in a tire factory.¹⁵⁰

3.13.3. Conclusion towards the risks: sectors, regional occurrences

The risk of human rights abuses by private security forces is to be considered in the mining and hydro-power sectors, which have complex impacts on the surrounding communities. In addition, presence of employees on strike, tensions between employers and union representatives, and high percentage of migrant workers in the workforce can indicate increased risk. While the latter risks can be present country-wide, the risks related to the mining and hydro-power sectors are characteristic for the regions of Eastern and South-Eastern Serbia.

The Serbian legal framework sets the requirements and the authority of private security companies, however the lack of adequate training for private security

¹⁴⁵ Petrovic, Predrag (2021): Anagažovanje privatnog obezbeđenja u javnim službama i ustanovama, Grupa 484.

¹⁴⁶ Ibid.

¹⁴⁷ Centar za istraživačko novinarstvo Srbije (n.d.): Napadi privatnog obezbeđenja [Attacks by private security]. <https://www.cins.rs/baze-podataka/napadi-privatnog-obezbedenja/> (last access: 18.01.2024).

¹⁴⁸ Đurić, Maja (2018): Incident u selu Rakita, sukob privatnog obezbeđenja i meštana. <https://n1info.rs/vesti/a447042-incident-u-selu-rakita-sukob-privatnog-obezbedenja-i-mestana/> (last access: 18.01.2024).; Georgievski, Jovana (2018): Strah u Rakiti. <https://www.slobodnaevropa.org/a/stara-planina-rakita-male-hidroelektrane/29672230.html> (last access: 19.01.2024).

¹⁴⁹ Radio Slobodna Evropa (2022): Aktivisti: Firma Zidin rasturila kamp protivnika rušenja planine Starica. <https://www.slobodnaevropa.org/a/kompanija-zidin-srbija-majdanpek-starica/31997216.html> (last access: 19.01.2024).; Beograd, NI (2022): Vladić: Aktivisti i novinari napadnuti na osmom grebenu Starice. <https://n1info.rs/vesti/vladic-aktivisti-i-novinari-napadnuti-na-osmom-grebenu-starice/> (last access: 19.01.2024).

¹⁵⁰ Beograd, NI (2022): Vladić: Aktivisti i novinari napadnuti na osmom grebenu Starice. <https://n1info.rs/vesti/vladic-aktivisti-i-novinari-napadnuti-na-osmom-grebenu-starice/> (last access: 19.01.2024).; Maričić, Slobodan (2021): Ljudska prava i fabrika Linglong: Slučaj vijetnamskih radnika u Zrenjaninu - šta sve znamo do sada. BBC News. <https://www.bbc.com/serbian/lat/srbija-59324121> (last access: 20.01.2024).



4. Environmental risks

Environment-related risks are covered by SCDDA when they lead to human rights violations – i.e. by banning substances that are dangerous to humans and the environment. The SCDDA focuses on certain environment-related obligations that are mandatory for enterprises taken from three international conventions: the Minamata Convention on Mercury, the Stockholm Convention on Persistent Organic Pollutants and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.¹⁵¹ The situation in Serbia regarding these environmental risks, as well as the relevant Serbian institutional framework, are analysed in the following sections.

4.1. Serbian institutional framework relevant for environmental risks in the business context

The Criminal Code of the Republic of Serbia¹⁵² recognizes the environment as a protective object and 18 criminal offenses against the environment, of which the most

significant are Environmental Pollution – infringement of the regulations on protection, preservation and improvement of the environment, air, water, or soil pollution (Article 260) and Environmental Damage – by exploitation of natural resources, construction, development work, or another manner (Article 264).

Although the Law on Liability of Corporate Entities for Criminal Offenses¹⁵³ has existed in Serbia since 2008, the issue of criminal liability in the domain of the environment is in practice rarely raised in Serbia. Namely, in most cases, the responsible person within a corporate entity is subject to criminal liability for a criminal act that is a consequence of illegal business activities of the company, and the eventual outcome of the criminal procedure is punishing the individual, but not the company. However, in light of environmental protection, it is necessary that the competent institutions – public prosecutor's offices and courts, recognize the importance of applying effective law in order to sanction the illegal behaviour of both individuals and corporate entities as perpetrators of crimes against the environment which, as a result, can have incalculable harmful consequences.¹⁵⁴

The most relevant institution for environmental risks in the business context is the Environmental Protection Inspection, which operates within the Ministry of Environmental Protection. Inspectional supervision includes tasks to be performed by the

¹⁵¹ Federal Ministry of Labour and Social Affairs (2023): Supply Chain Act FAQ. <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/FAQ/faq.html#doc3a956fcc-c35e-4655-a96a-6a39a1a0a2cfbodyText9> (last access: 20.12.2023).

¹⁵² Official Gazette of the Republic of Serbia, Nos. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019.

¹⁵³ Official Gazette of the Republic of Serbia, Nos. 97/08.

¹⁵⁴ Vukčević, Ljubica (2022): Criminal liability of corporate entities for criminal offenses against the environment. Renewables and Environmental Regulatory Institute. <https://reri.org.rs/wp-content/uploads/2023/05/RERI-Criminal-Liability-of-Corporate-Entities-for-Criminal-Offenses-Against-the-Environment.pdf> (last access: 12.12.2023).

¹⁵⁵ Due to the scope and complexity of laws and bylaws in the field of environmental protection (17 laws and over 240 bylaws), the Environmental Inspection Department prepared the Table of Competences as a comprehensive and unified approach of the inspection competences: https://www.ekologija.gov.rs/sites/default/files/inline-files/Inspection_competences_in_the_field_of_environmental_protection.pdf (last access: 12.12.2023).

state administration, namely the authorities of the state administration, Autonomous Province, and local self-government units.¹⁵⁵ Subject matter jurisdiction of the inspection in the field of environmental protection is determined by regulations governing this field on: waste management, air protection, nature, water, fish resources, environmental noise protection, ionising and non-ionising radiation, chemicals and biocidal products, etc.

The Law on Inspection Supervision¹⁵⁶ prescribes that individuals and legal entities can submit complaints and requests to the Inspection. Based on a submitted complaint, the inspectors are in obligation to initiate a proceeding, assess its merits, decide if there are conditions to act inter alia, and inform the individual/entity who submitted the complaint about its outcome. Submitting a complaint to the Inspection is exempt of any administrative fee and can be done electronically. However, if the proceeding is initiated based on a complaint, the individual or the legal entity who submit it does not represent a party in the proceeding.

The Serbian Environmental Protection Agency (SEPA) operates within the Ministry of Environmental Protection and oversees developing, managing, and coordinating the national environmental information system, gathering, and integrating environmental data, producing annual reports on the state of the environment. EU Progress reports for Serbia indicate the necessity to strengthen the capacities of the Agency, as well as to improve the timeliness of published reports and data, as they are being published with significant delays.¹⁵⁷

The National Register of Pollution Sources (NRPS)¹⁵⁸ is a collection of organised facts and figures on the causes of environmental pollution. This is a list of human activities that could be detrimental to the ecosystem in a certain location. The Register is a part of the information system of the Republic of Serbia's Environmental Information System, which is run by the SEPA in compliance with the laws governing ministries and environmental protection. In 2023, 30,249 businesses and 13,174 related sites were registered and provided information to the National Register of Pollution Sources.¹⁵⁹

4.2. Mercury pollution

4.2.1. Legal framework

SCDDA

Regarding the environmental risk of mercury pollution, the German SCDDA most directly relates to the Minamata Convention, stipulating the prohibition of the manufacture of mercury-added products, as defined in the Convention; the prohibition of the use of mercury and mercury compounds in manufacturing processes, as defined in the Convention; and the prohibition of the treatment of mercury waste contrary to the provisions of the Convention.

The Minamata Convention on Mercury¹⁶⁰ is a multilateral environmental agreement that addresses specific human activities which are contributing to widespread mercury pollution. It was adopted in 2013 and entered into force in 2017, with the aim to help reduce global mercury pollution.

Over the last decades, scientific evidence about the environmental impact of mercury and its compounds has grown tremendously. Past and present human activities have increased total atmospheric mercury concentrations by about 450% above natural levels¹⁶¹. Mercury may have toxic effects on the nervous, digestive and immune systems, and on lungs, kidneys, skin and eyes, and is considered by the World Health Organization (WHO) as one of the top ten chemicals or groups of chemicals of major public health concern¹⁶². It is especially dangerous to women and unborn children since it is transmitted through the placenta.

The Minamata Convention regulates the entire life cycle of mercury – its supply, trade, use, emissions, releases, storage, and the management of waste and contaminated sites. The Convention required to cease the manufacture, import and export of many mercury-containing products listed in the Convention by 2020/2025.¹⁶³ These products are in every-day use and include batteries, switches and relays, certain types of lamps, cosmetics, pesticides, biocides and topical

¹⁵⁶ Official Gazette of the Republic of Serbia, br. 36/15, 44/18-dr.zakon, 95/18.

¹⁵⁷ European Commission (2022): Serbia 2022 Report.; European Commission (2023): Serbia 2023 Report.¹⁵³ Official Gazette of the Republic of Serbia, Nos. 97/08.

¹⁵⁸ United Nations Economic Commission for Europe [UNECE] (2023): Innovative Ways to Relate With the Public, Share Information and Design Policy Trough Digitalization of Data. PRTR Register Of The Republic Of Serbia. https://unece.org/sites/default/files/2023-04/WGP_PRTR.pdf (last access: 15.01.2024).

¹⁵⁹ Pollution Release and Transfer Register portal of Republic of Serbia (n.d.): Pollution Release And Transfer Register. <http://77.46.150.218/prtrportal/?lang=de> (last access: 20.12.2023).

¹⁶⁰ United Nations Environment Programme [UNEP] (2023): Minamata Convention on Mercury.

¹⁶¹ UNEP (2018): Global Mercury Assessment.

¹⁶² World Health Organization [WHO] (2017): Mercury and health. <https://www.who.int/news-room/fact-sheets/detail/mercury-and-health> (last access: 20.12.2023).

¹⁶³ The full list of products with respective phase-out dates is available in the Annex A of the Minamata Convention: https://minamataconvention.org/sites/default/files/documents/information_document/Minamata-Convention-booklet-Oct2023-EN.pdf (last access: 20.12.2023).

antiseptics, and certain types of measuring devices such as thermometers and manometers. Mercury use in two major manufacturing processes, Chlor-alkali industry, and acetaldehyde production, is being phased out as well, along with restricting use in other industrial processes.

Article 21 of the Minamata Convention on Mercury requires that each Party to the Convention shall report to the Conference of the Parties, through the Secretariat, on the measures it has taken to implement the provisions of the Convention, on the effectiveness of such measures and on possible challenges in meeting the objective of the Convention.

Serbian law

The Minamata Convention was signed by Serbia in 2014 but was never ratified, meaning that it is still not part of Serbia's legal system.

Several laws and respective bylaws are relevant for the subject matter of the Minamata Convention: Law on Waste Management¹⁶⁴, Rulebook on management of used batteries and accumulators¹⁶⁵, Rulebook on the manner and procedure for the management of mercury-containing waste fluorescent tubes¹⁶⁶, Rulebook on the list of electrical and electronic products, measures restricting or prohibiting the use of electric and electronic equipment containing hazardous substances, the manner and procedure for management of waste originating from electrical and electronic products¹⁶⁷, Law on Chemicals¹⁶⁸, Rulebook on the restrictions and ban of production, placing on the market and use of chemicals¹⁶⁹, Rulebook on the import and export of certain hazardous chemicals¹⁷⁰, Law on integrated prevention and control of the environment pollution¹⁷¹.

The national legislation on chemicals prescribes bans and restrictions of use, placing on the market and production of mercury and mercury compounds. The Law on Waste Management, and its subsidiary legislation regulate the issues of hazardous waste management (collection, transport, disposal, transboundary movement), whereas the mercury waste is regulated as hazardous waste, and the relevant national provisions apply to mercury waste as well¹⁷². Serbia has a high level of alignment with the EU acquis on chemicals, and a good level of alignment on waste management, but implementation needs to be further strengthened¹⁷³.

Mercury is part of the national environmental monitoring system. The overall competence for such monitoring is under the Serbian Agency for Environmental Protection.

4.2.2. Infringements and risks

Since Serbia has not ratified the Minamata Convention, it does not submit national reports on the measures it has taken to implement the provisions of the Convention. This hinders the access to comprehensive and comparable data directly relevant to the requirements of SCDDA.

On the global level, the largest source of mercury emissions is artisanal and small-scale gold mining¹⁷⁴, followed closely by coal combustion, non-ferrous metal production and cement production¹⁷⁵. Considering Serbia's heavy reliance on coal-based energy, the largest source of mercury emissions in Serbia is coal combustion. According to the Minamata Initial Assessment for the Republic of Serbia, conducted in 2018 by the Ministry of Environmental Protection, the following source groups contribute with the major mercury inputs: coal combustion and other coal use (with total release of 5,810 kg Hg/y, or 52% of total release of Hg); use and disposal of other products (with total release of 2,834.5 kg Hg/y, or 25% of total release of Hg), informal dumping of general waste (with total release of 4,196 kg Hg/y, or 7% of total release of Hg), application, use and disposal of dental amalgam fillings (with total release of 616 kg Hg/y, or 5% of total release of Hg); primary metal production excluding gold production by amalgamation (with total releases of 370 kg Hg/year, or 3% of total release of Hg).¹⁷⁶

The same report states that the biggest data gaps were noticed with regard the data on general consumption of mercury in products, as well as metal mercury and as mercury containing substances. Even though products containing mercury (e.g. batteries, light sources, paints) are not produced in Serbia, they are present in the Serbian market. Official institutions (SEPA, the Customs Administration, the Statistical Office of the Republic of Serbia, Market Inspection etc.) do not have information about Hg presence in products on the Serbian market and information on its disposal in particular, the products such as thermometers, batteries with mercury, light sources with mercury. Another specific issue is the lack of baseline assessment on quantity of products and instruments which are in use (and have been put in use prior the introduction of ban), as well as illegal market of thermometers which contain mercury.¹⁷⁷

The assessment report brings detailed mercury inventory and identification of emissions and resources, as per the requirements of the Minamata Convention¹⁷⁸. According to the report, there is no primary extraction and processing of mercury in Serbia. There is gold extraction, but there is no gold producing

¹⁶⁴ Official Gazette of the Republic of Serbia, 36/2009, 88/2010, 14/2016, 95/2018, 35/2023.

¹⁶⁵ Official Gazette of the Republic of Serbia, 86/10.

¹⁶⁶ Official Gazette of the Republic of Serbia, 97/10.

¹⁶⁷ Official Gazette of the Republic of Serbia, 99/10.

¹⁶⁸ Official Gazette of the Republic of Serbia, 36/09, 88/10, 92/11 and 93/12.

¹⁶⁹ Official Gazette of the Republic of Serbia, 90/13, 25/15 and 02/16.

¹⁷⁰ Official Gazette of the Republic of Serbia, 89/10, 15/13 and 114/14.

¹⁷¹ Official Gazette of the Republic of Serbia, 135/04 and 25/15.

¹⁷² Ministry of Environmental Protection (2018): Minamata Initial Assessment for the Republic of Serbia.

¹⁷³ European Commission (2023): Serbia 2023 Report, pp. 136-137.

¹⁷⁴ Minamata Convention on Mercury in its Article 2 – Definitions, defines "Artisanal and small-scale gold mining" as gold mining conducted by individual miners or small enterprises with limited capital investment and production

¹⁷⁵ UNEP (2023): Minamata Convention on Mercury.

¹⁷⁶ Ministry of Environmental Protection (2018): Minamata Initial Assessment for the Republic of Serbia.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

with the mercury-amalgamation process. Besides the above-mentioned energy production, sources that are also present in Serbia are mining (copper and zinc) and cement production.

Regarding the chlor-alkali production (in which the use of mercury is to be phased out by 2025 for the parties of the Convention), chlor-alkali production facilities in Serbia which operated in the past are presently closed and are categorised as contaminated sites: HIP Petrohemija (Pančevo) and The Chemical Industry Župa (Kruševac)¹⁷⁹. Measures related to waste containing mercury from these two chlor-alkali electrolysis plants are not included in the Waste Management Program of the Republic of Serbia for the period from 2022 to 2031.¹⁸⁰

4.2.3. Conclusion towards the risks: sectors, regional occurrences

Serbia signed, but did not ratify The Minamata Convention, meaning the Convention is still not part of Serbia's legal system, and that the country does not submit national reports on the measures it has taken to implement the provisions of the Convention. In the context of the SCDDA requirements, this fact can represent both an accountability risk and the risk of adequate data unavailability.

Still, the national legal framework is in place and is aligned with the EU standards to a great extent, but the implementation still needs improvement.

The most significant source of mercury emissions is coal-combustion considering Serbia's coal-based energy production. Products containing mercury (e.g. batteries, light sources, paints) are not produced in Serbia, but they are present in the Serbian market, which in the context of supply chain due diligence places the risk at second-tier suppliers. The level of risk in this regard is closely related to risks in the area of hazardous waste disposal, analysed in the following sections. Other sectors present in the country which are sources of mercury emissions are mining (copper and zinc extraction) and cement production.

In the context of risks to human health one has to consider the two former chlor-alkali production facilities, which are categorised as contaminated sites: HIP Petrohemija (Pančevo) and The Chemical Industry Župa (Kruševac).

4.3. Persistent Organic Pollutants

4.3.1. Legal framework

SCDDA

Regarding the environmental risks related to production and use of chemicals, the German SCDDA most directly relates to the Stockholm Convention on Persistent Organic Pollutants. The Stockholm Convention on Persistent Organic Pollutants (POPs) is an international treaty adopted in 2001 and entered into force in 2004 to protect human health and the environment from the adverse effects of POPs¹⁸¹.

POPs are chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have toxic effects on both humans and wildlife. Exposure to POPs can lead to serious health effects, including birth defects, dysfunctional immune and reproductive systems, and damage to the central and peripheral nervous systems.

The main objectives of the Stockholm Convention are to: 1. Eliminate dangerous POPs, starting with the 12 worst; 2. Support the transition to safer alternatives; 3. Protect human health and the environment from the effects of POPs.

Initially, twelve POPs have been recognized as causing adverse effects on humans and the ecosystem and these can be placed in 3 categories:

- Pesticide: aldrin, chlordane, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene, mirex, toxaphene;
- Industrial chemicals: hexachlorobenzene, polychlorinated biphenyls (PCBs); and
- By-products: hexachlorobenzene; polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/PCDF), and PCBs.

The Convention requires the parties to implement measures to reduce or eliminate releases from intentional production and use (with the register of specific exemptions), measures to reduce or eliminate releases from unintentional production, measures to reduce or eliminate releases from stockpiles and wastes.

Serbian Law

The Stockholm Convention was ratified by the Republic of Serbia in 2009, and the respective National Implementation Plan (NIP) was adopted in 2010 and updated in 2015. The updated NIP included action plans projected until 2020. Since then, new action plans have not been adopted.¹⁸²

¹⁷⁹ Ibid.

¹⁸⁰ Coalition 27 (2022): Shadow Report on Chapter 27.

¹⁸¹ The full list of POPs listed in the Convention is available here: <https://www.pops.int/TheConvention/ThePOPs/AllPOPs/tabid/2509/Default.aspx> (last access: 21.12.2023).

¹⁸² Coalition 27 (2022): Shadow Report on Chapter 27.

Following the ratification of the Convention, systemic laws necessary to ensure its implementation were adopted: The Law on Chemicals¹⁸³ with respective bylaws¹⁸⁴, and the Law on Waste Management. According to the EU Progress Report, Serbia has a high level of alignment with the EU acquis on chemicals but needs to boost its administrative capacity to implement legislation in these areas and ensure proper monitoring of persistent organic pollutants¹⁸⁵. The Serbian Environmental Protection Agency is responsible for monitoring of POPs.

4.3.2. Infringements and risks

The Information Desk for Chemicals and Biocidal Products of the Ministry of Environmental Protection prepares information and guidelines intended primarily for business entities placing chemicals and biocidal products on the market in the Republic of Serbia, as well as for interested parties and citizens, i.e. consumers, publicly available on its website. The Chemicals Information Desk is modelled after the help desk of the European Chemicals Agency and is part of the HelpNet network of the European Chemicals Agency (ECHA), and since 2016 it has been officially listed on the ECHA website. Serbian environmental civil society organizations point out that the national information desk needs to improve the availability of provided information, and that not all the relevant documents are available on its website.¹⁸⁶

According to the updated NIP (2015) of the Ministry of Environmental Protection, it is established there is no intentional production, import or export of POPs in Serbia, nor any use of EU banned POP compounds in agriculture or industry.¹⁸⁷

The Stockholm Convention also regulates emissions of so-called unintentional POPs compounds (polychlorinated dibenzodioxins and furans and other compounds) which, among other things, are released during open waste incineration.

Based on the results of a preliminary inventory of unintentionally produced POPs, these chemicals are emitted to the environment from different sources located throughout Serbia. The most significant unintentional POP sources are: open burning processes; PCBs released from electrical equipment, and production of electric and heating energy. Furthermore, in Serbia, there are over 3000 unsanitary landfills scattered around the country, and the significant portion of POP emissions reaching the environment from these existing dumpsites indicates inappropriate application of waste management systems.¹⁸⁸

According to the data of the Environmental Protection Agency, in 2020, 165.42t of waste containing polychlorinated biphenyls (PCBs) were generated (Report on the State of the Environment 2020, 2021). From the presented quantities of oils for insulation and heat transfer, hydraulic oils containing PCBs are represented with the amount of 57.53t, and transformers and capacitors containing PCBs waste components and construction and demolition waste containing PCBs with 107.88t. 80.82t of this type of waste was treated. Of this, waste oils for insulation and heat transfer containing PCBs in the amount of 47.66t were treated by procedure R9, which means the operation of refining or other method of reuse of waste oil. 33.16t of waste transformers and capacitors containing PCBs were subjected to process R7 (renewing of components used for pollution decreasing). The quantities of treated waste containing PCBs increased compared to the previous year. In the mentioned period, 179.17t of this type of waste was exported. Out of that, 55.94t of waste oils for insulation and heat transfer containing PCBs were exported to the Swiss Confederation, and 123.23t of transformers and capacitors containing PCBs were exported to the Republic of Romania.¹⁸⁹

Owing to the lack of treatment or disposal plants for hazardous waste in Serbia, the only option to manage persistent organic pollutants waste is to keep it in temporary storage and when conditions are created (primarily financial), such waste should be exported for destruction in hazardous waste incinerators¹⁹⁰. Meanwhile, it needs to be assured that any persistent organic pollutants management activity does not negatively impact recycling flows.¹⁹¹

4.3.3. Conclusion towards the risks: sectors, regional occurrences

Serbia ratified The Stockholm Convention. Action plans for the respective NIP and the Updated NIP are outdated since 2021, and new action plans have not been adapted.

Serbia has a high level of alignment with the EU acquis on chemicals but needs to improve its administrative capacity to implement legislation in these areas and ensure proper monitoring of persistent organic pollutants.

Risks related to POPs are typically present in chemical industry and agriculture. However, according to the Updated NIP (2015) of the Ministry of Environmental Protection, it is established there is no intentional production, import or export of POPs in Serbia, nor any

¹⁸³ Official Gazette of the Republic of Serbia, 36/09, 88/10, 92/11, 93/12 and 25/15.

¹⁸⁴ Full list of bylaws: https://www.ekologija.gov.rs/sites/default/files/inline-files/List_of_regulations.pdf (last access: 20.12.2023), p. 13.

¹⁸⁵ European Commission (2023): Serbia 2023 Report, p. 137.

¹⁸⁶ Coalition 27 (2022): Shadow Report on Chapter 27.

¹⁸⁷ Milic, Jelena; Curcic, Marijana; Brnjas, Zvonko; Carapina, Hristina; Randjelovic, Jasminka; Krinulovic, Katarina; Jovovic, Aleksandar (2019): The socio-economic impact timeline in Serbia for persistent organic pollutants (POPs). <http://ebooks.ien.bg.ac.rs/1358/1/pops.pdf> (last access: 12.01.2024).

¹⁸⁸ Ibid.

¹⁸⁹ Government of the Republic of Serbia (2022): Waste Management Program in the Republic of Serbia for 2022–2031. https://www.ekologija.gov.rs/sites/default/files/2022-03/program_upravljanja_otpadom_eng_-_adopted_version.pdf (last access: 12.01.2024).

¹⁹⁰ Stevanovic-Carapina, Hristina; Milic, Jelena; Curcic, Marijana; Randjelovic, Jasminka; Krinulovic, Katarina; Jovovic, Aleksandar; Brnjas, Zvonko. (2016): Solid waste containing persistent organic pollutants in Serbia: from precautionary measures to the final treatment (case study). Waste Manage Res 34, pp. 677–685. <https://doi.org/10.1177/0734242X16650515> (last accessed 20.12.2023).

¹⁹¹ Ibid.

use of EU banned POP compounds in agriculture or industry.

Risks are therefore primarily related to waste disposal, in two aspects: considering the lack of treatment or disposal plants for hazardous waste in Serbia, POPs waste needs to be temporarily stored before export. Also, there is a risk of unintentional release from open waste incineration, in both legal and illegal landfills, which exist country wide. Risks in the area of hazardous waste disposal are analysed in more detail in the following section.

4.4. Waste Management

4.4.1. Legal framework

SCDDA

Regarding the environmental risks related to hazardous and other waste, the German SCDDA most directly relates to The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. The Convention was adopted in 1989 and it came into force in 1992. It is the most comprehensive global environmental agreement on hazardous wastes and other wastes. With 175 Parties (as at 31 March 2011), it has nearly universal membership. The Convention aims to protect human health and the environment against the adverse effects resulting from the generation, transboundary movements and management of hazardous wastes and other wastes. The Basel Convention regulates the transboundary movements of hazardous wastes and other wastes and obliges its Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The Convention covers toxic, poisonous, explosive, corrosive, flammable, eco-toxic and infectious wastes. Parties also have an obligation to minimize the quantities that are transported, to treat and dispose of wastes as close as possible to their place of generation and to prevent or minimize the generation of wastes at source.¹⁹²

SCDDA also refers to the Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste. This European Union regulation governs the transboundary movement of waste, including hazardous waste, within the EU and between the EU and non-EU countries. It aims to ensure that such movements are conducted in an environmentally sound manner and to prevent the dumping of waste in developing countries. The regulation has been in force since July 2006.

SCDDA stipulates:

1. the prohibition of exports of hazardous waste and other within the meaning of The Basel Convention

and the Regulation (EC No 1013/2006):

a) to a party that has prohibited the import of such hazardous and other wastes (Article 4 (1) (b) of the Basel Convention),

b) to a state of import as defined in Article 2 No. 11 of the Basel Convention that does not consent in writing to the specific import, in the case where that state of import has not prohibited the import of such hazardous wastes (Article 4 (1) (c) of the Basel Convention),

c) to a non-party to the Basel Convention (Article 4 (5) of the Basel Convention),

d) to a state of import if such hazardous wastes or other wastes are not managed in an environmentally sound manner in that state or elsewhere (Article 4 (8) sentence 1 of the Basel Convention);

2. the prohibition of the export of hazardous wastes from countries listed in Annex VII to the Basel Convention to countries not listed in Annex VII, and
3. the prohibition of the import of hazardous wastes and other wastes from a non-party to the Basel Convention.

Serbian law

Serbia signed and ratified The Basel Convention in 2000. According to the EU Progress report, Serbia has a good level of alignment with the EU acquis in waste management, but implementation should be further strengthened.¹⁹³

In 2022, the Serbian Government adopted the Waste Management Program in the Republic of Serbia for 2022–2031, which was preceded by the Waste Management Strategy 2010–2019. The Program establishes strategic goals for the improvement of the waste management system and the basic principles that should guide all stakeholders in waste management.¹⁹⁴ The general objective is to develop a sustainable waste management system in order to conserve resources, health of the people and reduce negative environmental impacts and space degradation. The progress made in achieving the overall objective of the Program will be monitored through the following indicators: a) level of municipal waste disposed of in non-sanitary landfills in relation to the total amount of waste generated by municipal waste (%), b) degree of hazardous waste disposed of (%).¹⁹⁵ Specific objective of the Program regarding hazardous waste is: A sustainable hazardous and industrial waste management system is in place. To achieve this specific objective, the Program sets to achieve the following: a) by the end of December 2029, to establish separate collection of hazardous waste fractions produced by households, b) build capacities for hazardous and industrial waste management.¹⁹⁶

¹⁹² UNEP (2011): Basel Convention on the Control of Transboundary Movements of Hazardous Wastes. <https://www.unep.org/resources/report/basel-convention-control-transboundary-movements-hazardous-wastes> (last access: 20.12.2023).

¹⁹³ European Commission (2023): Serbia 2023 Report, p. 136.

¹⁹⁴ Coalition 27 (2023): Shadow Report on Chapter 27.

¹⁹⁵ Government of the Republic of Serbia (2022): Waste Management Program in the Republic of Serbia for

2022–2031. https://www.ekologija.gov.rs/sites/default/files/2022-03/program_upravljanja_otpadom_eng_-_adopted_version.pdf (last access: 12.01.2024).

¹⁹⁶ Ibid.

The Law on Waste Management¹⁹⁷ sets the types of waste and its classification, waste management planning, stakeholders, obligations and responsibilities regarding waste management, management of special waste streams, permission requirements and procedures, cross-border movement of waste, reporting, financing of waste management, supervision, and other relevant aspects of waste management. Waste management consists of a set of activities of common interest that include the implementation of prescribed action plans implemented in the processes of collection, transport, storage, treatment, and disposal of waste, including supervision of these activities and responsibility for waste management facilities after their closure. Based on this law, several bylaws have been adopted that further define the framework of waste management, including the management of special waste streams. In addition, these bylaws further align national legislation with EU regulations in this area.¹⁹⁸ The Law on Waste Management was amended in 2023, and according to civil society organizations the amendments failed to resolve many issues and have instead contributed to further confusion, primarily in the area of hazardous waste storage. This is because the Amendments extend the permitted storage period for hazardous waste from 12 to 36 months and allow mobile plants to generate energy from waste.¹⁹⁹

In addition, the new Amendments to the Law on Waste Management place special emphasis on construction waste. Construction waste includes waste resulting from construction and demolition, adaptation, renovation and reconstruction of residential, industrial, and other facilities, maintenance and replacement of infrastructure facilities, as well as excavation for residential, industrial, and road infrastructure, namely: non-hazardous construction and demolition waste that does not contain dangerous substances (recyclable, inert, etc.); hazardous waste from construction and demolition that requires special handling, which has one or more hazardous characteristics that classify it as hazardous waste (waste containing asbestos, waste with a high content of heavy metals). Special regulations apply to these types of waste. The Amendments also added the obligation for investors to prepare a construction waste management plan and specified the way investors must handle construction waste. Investors must draw up a contract on handing waste over, or a contract on the treatment of construction waste between an investor and a collector, i.e., waste treatment plant operator. Investors may also process construction waste themselves in special cases.²⁰⁰

The Ministry for Environmental Protection has the key institutional responsibility in the field of waste management, including hazardous waste, except radioactive waste; approval of cross-border movement of waste, issuing permits prescribed by law, supervision,

and control over the application of waste management measures. The Environmental Protection Agency, as an administrative body within the Ministry in the capacity of a legal entity, performs state administration tasks related to maintaining and updating the database on waste management in the environmental protection information system, in accordance with the law governing environmental protection.²⁰¹ According to the EU Progress Report, Serbia's inspection capacity in the waste sector remains insufficient and needs further strengthening.²⁰²

Other ministries are in charge for certain waste streams:

- Agricultural waste and animal by-products: Ministry of Agriculture, Forestry and Water Management;
- Mining waste: Ministry of Mining and Energy;
- Medical waste and pharmaceutical waste: Ministry of Health;
- The Ministry of Labour, Employment, Veterans and Social Affairs inspects occupational safety on the territory of the Republic of Serbia. The companies subject to inspection operate in all sectors, including the waste management sector.
- The Ministry of Construction, Transport and Infrastructure inspects trucks, trains, and ships.

Joint inspections of these ministries and the Ministry for Environmental Protection are in place, and they need to be further improved.²⁰³

4.4.2. Infringements and risks

Hazardous waste and transboundary movement of waste

In accordance with the Law on Waste Management, the import of hazardous waste is not allowed, except for the purpose of processing and energy production. Non-hazardous waste may be imported for the purpose of reuse if there is a facility provided for the treatment of such waste in the Republic of Serbia. Exceptionally, certain types of hazardous waste can be imported, which are used in the industry of the Republic of Serbia as secondary raw materials, in accordance with the national goals for the treatment of such waste. In that case, the import of waste is done based on a permit issued by the Ministry. The government determines which types of hazardous waste can be imported as secondary raw materials²⁰⁴. According to the data from The Waste Management Program in the Republic of Serbia for 2022–2031, the total production of hazardous waste in Serbia is on average 68,000 tons per year. An adequate network of hazardous waste treatment facilities has not been established. Capacities for chemical and physical treatment of hazardous waste do not fully meet the necessary requirements, while sites for central storage of hazardous waste have not

¹⁹⁷ Official Gazette of the Republic of Serbia, No. 36/09 and 95/18-other law.

¹⁹⁸ Government of the Republic of Serbia (2022): Waste Management Program in the Republic of Serbia for 2022–2031, https://www.ekologija.gov.rs/sites/default/files/2022-03/program_upravljanja_otpadom_eng_-_adopted_version.pdf (last access: 12.01.2024).

¹⁹⁹ Coalition 27 (2023): Shadow Report on Chapter 27.

²⁰⁰ Coalition 27 (2023): Shadow Report on Chapter 27.

²⁰¹ Government of the Republic of Serbia (2022): Waste Management Program in the Republic of Serbia for 2022–2031, https://www.ekologija.gov.rs/sites/default/files/2022-03/program_upravljanja_otpadom_eng_-_adopted_version.pdf (last access: 12.01.2024).

²⁰² European Commission (2023): Serbia 2023 Report, p. 136.

²⁰³ Government of the Republic of Serbia (2022): Waste Management Program in the Republic of Serbia for 2022–2031, https://www.ekologija.gov.rs/sites/default/files/2022-03/program_upravljanja_otpadom_eng_-_adopted_version.pdf (last access: 12.01.2024).

²⁰⁴ Ibid.

been established²⁰⁵.

Waste that cannot be treated or disposed of in an acceptable and efficient way for the environment due to the lack of technical possibilities and facilities in the Republic of Serbia must be exported from the country. According to the statistical data of the Environmental Protection Agency, during 2020, 424,071 tons of waste were exported, of which 12,796 tons were hazardous waste. More than half of the exported waste is metals, of which the most common are metals that contain iron. Significant quantities of exported waste are wastepaper and cardboard and paper packaging, then glass and plastic packaging, slag from iron casting furnaces and waste edible oils and fats. Exports of hazardous waste include lead batteries and accumulators, followed by hazardous components removed from discarded electrical and electronic equipment, waste from thermal metallurgy of lead and soil and waste acids from chemical surface treatment and metal protection.²⁰⁶

Regarding the sectors that contribute most to hazardous waste generation, it is difficult to obtain exact data, as the reporting requirements (according to the Law on Waste Management and its bylaws) recognize 20 groups in the Waste Catalogue, and the Group 16, in which the majority of hazardous waste is generated according to the reports of SEPA, is classified as "Waste not otherwise specified in the Catalogue"²⁰⁷. Other major groups in which hazardous waste is generated are Waste from thermic processes, Construction and demolition waste, Waste from oils and liquid fuels.²⁰⁸

During 2020, wastepaper and cardboard and wastepaper and plastic packaging make up more than half of the amount of waste imported. The representation is followed by grinding waste from the thermal processes of the iron and steel industry. Hazardous waste is lead batteries, slag from thermal metallurgy of lead and waste from mechanical treatment of waste containing hazardous substances. Large quantities of recyclable materials are exported, although there are processing capacities in Serbia. Therefore, it seems that the supply and demand of recyclable materials do not always coincide²⁰⁹

Packaging waste

Companies that produce or manage packaging and packaging waste are obliged to submit annual reports to the competent authorities. According to the Report on Packaging and Packaging Waste Management for 2021 published by the Serbian Environmental Protection Agency, in 2021 seven operators managed packaging and packaging waste for 1,924 legal entities that put packaged products on the market of the

Republic of Serbia. No company has a license to manage packaging waste independently. Seven operators licensed to manage packaging waste are: SEKOPAK, EKOSTAR PAK, DELTA-PAK, CENEKS, TEHNO EKO PAK, EKOPAK SISTEM and UNI EKO PAK.²¹⁰ According to the same report, the total amount of packaging placed on the market of the Republic of Serbia in was 389,955.9t. The operators have reported 247,633.8t of reused packaging waste. Out of this amount, 237,348.6t was disposed for recycling. Based on this data, it can be concluded that the overall national goals of Republic of Serbia for 2021 are fulfilled, with 63.7% of packaging waste reused and 61.1% of packaging waste recycled²¹¹.

On the other hand, the debate on the introduction of a deposit system is still ongoing and the delay in deciding has led to problems in municipal waste management planning processes.²¹²

Special waste streams

According to the Report on products that become special waste streams after use in the Republic of Serbia, published in 2022 by the Environmental Protection Agency, 4,352 notices were sent to companies that failed to submit annual reports pursuant to their obligation to submit data on imported/manufactured products that become special waste streams after use. This includes the following groups of products that become special waste streams after use: tires, batteries or accumulators, oils, electrical and electronic products, and vehicles.²¹³

4.4.3. Conclusion towards the risks: sectors, regional occurrences

Serbia ratified The Basel Convention, and its legal framework regarding waste management has a good level of alignment with the EU acquis. However, the implementation should be further strengthened, both in the waste management procedures and infrastructure, and the capacities of respective inspection.

Capacities for chemical and physical treatment of hazardous waste do not fully meet the necessary requirements, while sites for central storage of hazardous waste have not been established. With the latest amendments to the Law on Waste, the permitted storage period for hazardous waste was extended from 12 to 36 months.

According to the available data, the majority of generated hazardous waste origins from metal processing and construction sectors.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ For the full list of groups see Rulebook on classification and categorization of waste: <https://www.paragraf.rs/propisi/pravilnik-kategorijama-ispitivanju-klasifikaciji-otpada.html> (last access: 20.12.2023).

²⁰⁸ Serbian Environmental Protection Agency (2022): Waste management in Serbia 2011-2021. http://www.sepa.gov.rs/download/Upravljanje_otpadom_2011-2021.pdf (last access: 20.12.2023).

²⁰⁹ Government of the Republic of Serbia (2022): Waste Management Program in the Republic of Serbia for 2022-2031. https://www.ekologija.gov.rs/sites/default/files/2022-03/program_upravljanja_otpadom_eng_-_adopted_version.pdf (last access: 12.01.2024).

²¹⁰ Serbian Environmental Protection Agency (2022): Report on Packaging and Packaging Waste Management for 2021. http://www.sepa.gov.rs/download/Ambalaza_2021.pdf?_x_tr_sch=http&_x_tr_sl=sr&_x_tr_tl=en&_x_tr_hl=sr&_x_tr_pto=wapp (last access: 20.12.2023).

²¹¹ Ibid.

²¹² Coalition 27 (2023): Shadow Report on Chapter 27.

²¹³ Serbian Environmental Protection Agency (2022): Report on products that become special waste streams after use in the Republic of Serbia, 2021. http://www.sepa.gov.rs/download/Posebni_tokovi_2021.pdf (last access: 20.12.2023).



Annex

List of interview partners

Civil society organizations:

1. Astra <https://astra.rs/en/>
2. Belgrade Center for Human Rights <https://www.bgcentar.org.rs/>
3. All Initiative for Economic and Social Rights <https://www.allinitiative.org/en/home/>
4. Center for the Politics of Emancipation <https://cpe.org.rs/about-us/>
5. Center for Dignified Work <http://cdsr Srbija.org/about-us/>
6. Renewables and Environmental Regulatory Institute (RERI) <https://reri.org.rs/en/>

International organizations:

7. International Labour Organization (ILO): https://www.ilo.org/budapest/countries-covered/serbia/WCMS_468114/lang-en/index.htm

Business associations:

8. Serbian Chamber of Commerce/Responsible Business Hub: <https://en.pks.rs/>; <https://responsiblebusinesshub.pks.rs/>
9. AHK <https://serbien.ahk.de/sr/>
10. Serbian Association of Employers <https://poslodavci.rs/about-us/>

State Institutions/Agencies:

11. Development Agency of Serbia <https://ras.gov.rs/en>
12. Ministry of Human and Minority Rights and Social Dialogue: <https://www.minljmpdd.gov.rs/>
13. Commissioner for Protection of Equality <https://ravnopravnost.gov.rs/en/>

Trade unions:

14. United Sector Unions "Independence" <https://nezavisnost.org/>